

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088-DM
PG&E CORPORATION AND PACIFIC) Chapter 11
GAS AND ELECTRIC COMPANY,)
Debtors.) San Francisco, California
) Wednesday, June 3, 2020
) 10:00 AM
)
CLOSING ARGUMENTS
CONFIRMATION HEARING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (Via Zoom):

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5 Also Present: WILLIAM B. ABRAMS
Individual Fire Claimant
6 Eric Carlson
Individual Fire Claimant
7 Mary Wallace
8 Individual Fire Claimant

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17 Court Recorder: LORENA PARADA/ANKEY THOMAS
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20

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24 Proceedings recorded by electronic sound recording;
25 transcript provided by transcription service.

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SAN FRANCISCO, CALIFORNIA, WEDNESDAY, JUNE 3, 2020, 10:00 AM

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(Call to order of the Court.)

THE COURT REPORTER: This is the bankruptcy court for the Northern District of California. Court is now in session, the Honorable Dennis Montali presiding. Matter of PG&E Corporation.

One moment, Your Honor, while I bring in counsel.

THE COURT: Can you hear me all right?

THE COURT REPORTER: Yes, Your Honor. Mr. Karotkin is joining.

THE COURT: Okay.

THE COURT REPORTER: And Mr. Tsekerides is also joining.

THE COURT: Good morning, Mr. Karotkin.

MR. KAROTKIN: Good morning, Your Honor. How are you?

THE COURT: Or good afternoon, I should say.

Mr. Tsekerides, good afternoon.

MR. TSEKERIDES: Good afternoon, Your Honor.

THE COURT: Ms. Parada, those are the only two counsel coming in to begin with, correct?

THE COURT REPORTER: I believe so. Yes, Your Honor.

THE COURT: All right.

All right. Mr. Karotkin or both of you, which of you, let's confirm again you -- oop, lost the picture. What

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1 happened?

2 MR. TSEKERIDES: Well, we see you, Your Honor.

3 MR. KAROTKIN: Yes. We can see you.

4 THE COURT: Yeah, okay. No, I -- there we go. Excuse
5 me. One second. A little adjustment here. Okay.

6 You had previously indicated a desire for two-and-a-
7 half hours, and that was before we talked about or we had the
8 discussion about changing the sequence. Is that still your
9 estimate for this morning or today?

10 MR. KAROTKIN: Your Honor, I'm having a hard time
11 getting back to the screen. I don't know if you can hear me?

12 THE COURT: Yeah, I can hear you.

13 MR. KAROTKIN: I'm not the most technologically --

14 THE COURT: Can you hear me all right?

15 MR. KAROTKIN: I can hear you, but I can't see
16 anybody.

17 THE COURT: Well, the only people to see are me and
18 Mr. Tsekerides.

19 MR. KAROTKIN: No, no, I realize that. But somehow
20 I've lost the screen. Let me -- hold on a minute. I
21 apologize. I don't know how to fix it.

22 THE COURT: Well, we'll give you a moment to fix it,
23 but do you still want to have the two-and-a-half hours?

24 MR. KAROTKIN: No, I don't believe we'll need -- I
25 think it would be probably closer to two hours, between myself

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and Mr. Johnston.

THE COURT: Okay. Let me just go through a couple of housekeeping chores for the benefit of everyone else.

So the original plan was to give the debtors' counsel two-and-a-half hours. If they take less time, that's fine, but whenever debtors' counsel finish their opening argument, I'm going to take a forty-five-minute break for everyone's convenience, regardless of what the time is. And so from a technical point of view, the Zoom screen from the Court will be running. It will be open, but it won't be recording. So it will just be dead image. It will be the logo of the Court, or something of that nature.

Those of you who are sticking around, you can leave it on and go about your business or leave it on and sit there and watch the screen for forty-five minutes or you can log out, if you wish. And when we break, I'll announce the resume time, so add forty-five minutes, and you'll just need to log in by that time. I'm going to stick as closely as I can to the schedule, just because a lot of people have wanted to be heard, so that's the plan.

If during the argument I turn my camera off so you just see my name, that doesn't mean I'm ignoring you. I might just stand up and stretch my legs or something, but I'm still listening. If for some reason there's a disconnect, I'll be in touch with my courtroom deputy. And she'll get the message;

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1 she's very good at that. And so I don't know whether we'll
2 need to do that or not.

3 Now, I have received several requests for alteration
4 of the schedule, and to the extent that I'm able to accommodate
5 people, I will. And based upon the time that Mr. Karotkin and
6 Mr. Tsekerides conclude and when we take our break, I might
7 very well look at the list for the speakers tomorrow and move
8 them up to today, if that's convenient. I won't penalize
9 someone who can't do it, but my intention is to be economical,
10 in part so that I can accommodate others who, for whatever
11 reason, aren't going to be -- or didn't come in and didn't
12 participate or didn't give me a heads-up that they were going
13 to participate.

14 So with that, unless either of you counsel have any
15 questions, I'm prepared to shut up and listen for your
16 argument. So please proceed, unless you want to raise any
17 preliminary matters.

18 MR. KAROTKIN: No, sir. We're prepared to proceed.

19 THE COURT: Okay. Thank you.

20 MR. KAROTKIN: Okay. For the record, Your Honor, good
21 morning and afternoon, as appropriate. Stephen Karotkin, Weil,
22 Gotshal & Manges, for the debtors.

23 First, Your Honor, I want to take the opportunity to
24 thank you on behalf of the debtors and my firm and the Jones
25 Day firm for accommodating us with this confirmation hearing

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1 during these very trying times. It is very, very much
2 appreciated by all of us, particularly in view of the impending
3 deadlines under AB 1054.

4 As you know, Your Honor, we're before you today with
5 respect to a plan that's the culmination of literally months of
6 hard-fought, good faith negotiations that has the overwhelming
7 support of virtually all constituencies. Your Honor, you, who
8 presided over these proceedings, know better than anyone,
9 perhaps, the complexities involved in these cases -- these
10 unprecedented cases, and the plan is, indeed, a remarkable
11 achievement, given those complexities, the number of different
12 constituencies and interests represented in these cases,
13 including the CPUC and the Governor's Office, and the need to
14 achieve a successful reorganization in the time necessary to
15 meet the June 30th AB 1054 deadline that is so critical, Your
16 Honor, to all parties in these cases.

17 Perhaps most importantly, Your Honor, consistent with
18 the concern you have expressed, since the inception of these
19 cases, the plan before you today has the overwhelming support
20 of the fire victims in addition, Your Honor, to the support of
21 the Governor's Office, the CPUC, and I would note it has
22 received all CPUC approvals, and that plan before you today,
23 Your Honor, is fully compliant with AB 1054, all of which --
24 all of those approvals and support serve to ensure expedited
25 distributions, Your Honor, to fire victims. And that, Your

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1 Honor, is the principal goal that these debtors have expressed
2 since these cases were commenced last January and since we
3 first appeared before Your Honor.

4 And as both Mr. Ziman and Mr. Wells testified during
5 the evidentiary portion of these proceedings, all of the
6 financing -- all of the financing, necessary for the plan to go
7 effective is fully committed. Therefore, if Your Honor is
8 inclined to confirm this plan, it is ready for prompt
9 consummation and prompt distributions to creditors and,
10 particularly, Your Honor, to the fire victim trusts.

11 THE COURT: Clarify one point, though. I went back
12 and reread the statement filed by the governor and asked
13 myself, if I do sign an order confirming the plan, doesn't it
14 still depend upon one more response from the governor?

15 MR. KAROTKIN: It does, Your Honor, and we have been
16 working with the Governor's Office. The Governor's Office has
17 been reviewing the documents, has been giving its input, to the
18 extent that it has input, on certain of the documents necessary
19 to implement the plan, but we are working virtually on a daily
20 basis with the Governor's Office and at least to my knowledge,
21 everything is moving smoothly in that regard.

22 THE COURT: And is that -- is that the last of the
23 predicates, the CPUC, the Bankruptcy Court, and the governor?
24 Is there any other regulatory or authority that has to weigh in
25 on this?

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1 MR. KAROTKIN: No, sir. In fact, I think we may have
2 advised you already, to the extent that we needed FERC
3 approval, we do have that.

4 THE COURT: Okay. I lost that in the shuffle
5 somewhere. Okay.

6 MR. KAROTKIN: Okay. So as I indicated, Your Honor,
7 as both Mr. Ziman and Mr. Wells testified, all of the financing
8 is necessary to implement the plan and, as demonstrated in --
9 I'm sorry.

10 In the absence of confirmation, the results are
11 Draconian. It's plainly evident, Your Honor, that if this plan
12 is not confirmed and not permitted to go forward, distributions
13 to fire victims and others will be delayed for months or, more
14 likely, years and the critical protections and benefits of AB
15 1054 and the go-forward wildfire fund will be lost.

16 As demonstrated in the voting certification filed by
17 Prime Clerk, all voting classes but one have voted
18 overwhelmingly to accept the plan. It wasn't even close. The
19 only rejecting class, as Your Honor knows, is the statutorily
20 subordinated class of disputed PG&E equity rescission and
21 damage claims, which incidentally, Your Honor, voted
22 overwhelmingly by number to accept the plan, and one creditor,
23 asserting quite a large claim, turned the tide on the amount.
24 And I will note to you there is only one claimant before the
25 Court in that class, only one, that is objecting to

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confirmation of the plan.

As we have further demonstrated in our memorandum and will address later in our opening statement, with respect to that rejecting class, Section 1129(b) of the Bankruptcy Code has been satisfied as to that subordinated class. That rejection is no impediment to confirmation and cannot frustrate, and should not be allowed, Your Honor, to frustrate the consensus that has been achieved under the auspices of this Court and with the invaluable assistance of former Bankruptcy Judge Newsome.

The declarations the plan proponents have filed are memorandum in support of confirmation and in opposition to the objections. The uncontroverted -- and I want to emphasize, Your Honor, uncontroverted, testimony before the Court and, in fact, Your Honor, the entire record of these proceedings demonstrate that the plan complies with all of the requirements for confirmation under Section 1129, 1129(a) of the Bankruptcy Code, and as I indicated, to the extent required, 1129(b) of the Bankruptcy Code.

And Your Honor, certain disgruntled fire victims and some fire victims' attorneys, who incidentally represent literally only a handful of fire claimants, have provided no evidence -- and I emphasize, Your Honor, no evidence nor, for that matter, any basis to silence the voices of the literally, Your Honor, tens of thousands of fire victims who have spoken

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1 so loudly in favor of the plan and who are waiting for the
2 distributions so that they can continue to rebuild their lives
3 and their communities after these devastating fires.

4 As Your Honor knows, in connection with our reply to
5 the objections and our memorandum in support of confirmation,
6 we also filed a chart that summarizes the objections that were
7 filed, as well as our responses.

8 THE COURT: You haven't updated -- but you haven't
9 updated that chart, have you?

10 MR. KAROTKIN: We have not, Your Honor, because --

11 THE COURT: Okay.

12 MR. KAROTKIN: -- in fact, we have been working, up
13 until about fifteen minutes --

14 THE COURT: That's fine. The more -- the more you get
15 resolved the better. I don't care about the chart.

16 MR. KAROTKIN: Okay. And I will go through that with
17 you so we can level-set where we are today. That chart
18 indicated that some items had already been resolved, and there
19 have been additional resolutions of outstanding objections. As
20 you well know, because I believe you signed an order yesterday,
21 all but one of the objections filed by the tort claimants'
22 committee have been withdrawn, and I am also pleased to report
23 that I believe we have resolved all but one of the objections
24 filed by the UCC. And I'm sure that Mr. Bray or someone will
25 correct me if I misstate that, but I think I'm accurate in that

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1 regard.

2 I think you will note that immediately prior to the
3 start of this hearing, BOK (sic), the indenture trustee,
4 withdrew its objection because that has been resolved, as well,
5 and I believe in a minute or so I'll go through some other
6 items that have been resolved, as well.

7 As you noted in your order yesterday or the day before
8 on scheduling, I believe you said you were deferring
9 consideration of executory contract issues. And I think you
10 also said in connection with that, that would include issues
11 with respect to indemnification and contribution as well. I
12 was a little confused by your docket order yesterday. Or in
13 fact, there were two of them that seemed to conflict with this
14 because I think you may have raised issues with respect to
15 that.

16 I think that the UCC -- you permitted the UCC to file
17 a surreply brief that raised some of those issues as well, and
18 it would be -- it would be our request, based on that
19 submission and based on what we thought was our understanding
20 of your ruling that to the extent you wanted to address those
21 issues, perhaps, I don't know whether it was outside the
22 context of executory contracts or exactly what you had in mind,
23 we would suggest deferring that until Friday rather than
24 addressing that today.

25 THE COURT: Well, let me explain because if I've

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1 created a confusion, I apologize, but I've just been deluged
2 with stuff to keep up with, and you and your teams of thousand
3 of people have overwhelmed me and my four staff; two law
4 clerks, two courtroom staff. And so when I saw the objections
5 and the request to participate and so on, there seemed to be so
6 many that related to cure that I overlooked, for the time
7 being, the fact that part of cure is the indemnification and
8 contribution issue.

9 MR. KAROTKIN: Yes.

10 THE COURT: And so that, in my thinking, was not that
11 it wasn't important and critical, it was -- it seemed like the
12 cure issue was so discrete, but it starts to bleed over into
13 some of these other issues. And there I was, whatever day it
14 was, I've lost track of days, I just couldn't keep up with it.
15 Then many of the lawyers who are still responding and want to
16 be heard have weighed in on this subject of the discharge and
17 the scope of this thing. And so pretty soon what starts as a
18 simple cure question becomes much more of a difficult issue,
19 and that implicates 502(e) and what have you. So I need some
20 help and we need to work together there, and maybe Friday would
21 be the time to do it. So let's -- I apologize if I've confused
22 you. It's that I'm just confused by the moving targets here,
23 so we'll come back to it when convenient. Okay?

24 MR. KAROTKIN: Okay. Thank you, sir.

25 THE COURT: That work? Okay.

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1 MR. KAROTKIN: Yes, sir. Yes, sir.

2 THE COURT: And excuse me, any of the counsel who will
3 be arguing later today or tomorrow morning can raise that issue
4 also and clarify it.

5 MR. KAROTKIN: Okay. Thank you, sir.

6 Immediately prior to the hearing that started at 1
7 o'clock, I believe -- and I can't confirm that because I
8 haven't been able to look at my emails with the docket, that we
9 did file a draft -- a draft, and let me emphasize, a draft, of
10 an amended plan, which has certain revisions in the plan to
11 address how we have resolved certain objections and how we
12 think, by modifying certain language in the plan, we can
13 resolve certain objections. And it might be helpful -- I don't
14 know if you have access to that --

15 THE COURT: I don't. And again, this is a technical
16 matter, but I -- in order to make this Zoom work for me at
17 home, I cannot be at the same time on the court secure internet
18 system, so I'm docket-free.

19 MR. KAROTKIN: Well, I think that by reason of those
20 modifications to the plan, we have addressed, as I said, most
21 of the -- all but one of the UCC objections. I believe we have
22 addressed the objections raised by the ad hoc trade committee,
23 in large part. I believe that we have addressed all of the
24 objections filed by what I'll call the Adventist Group other
25 than -- and let me be clear, other than -- because I spoke with

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1 Mr. Mintz just before the hearing, other than issues they have
2 with respect to the documentation of the fire claimants' trust
3 agreement and trust resolution procedures. But all other
4 matters with respect to the provisions in the plan relating to
5 discharge, releases, and those items, have been resolved by the
6 proposed language that we filed earlier today.

7 And I believe, Your Honor, that those modifications to
8 the plan largely address -- we feel, in fact, they largely
9 address all of the issues that have been raised with respect to
10 Section 10.3 and the scope of the discharge; Section 6.1, which
11 has been focused on, which we have deleted entirely from the
12 plan; the interpretation section, Your Honor, which was raised
13 by Adventist and others, and by you, by the way.

14 THE COURT: My late night attack on you, right?

15 MR. KAROTKIN: Yeah, I guess. You disturbed me right
16 before I went to sleep last night, Your Honor. I'm not going
17 to forgive you for that one. But we have eliminated the
18 language in the interpretation provision that I think was
19 causing issues for people, so I think that we have made a lot
20 of progress addressing and I think, really, from our
21 perspective, disposing of those issues. You will note that
22 with respect to Section 10.3 of the plan, it has been changed.
23 And I think it might be helpful for me to even -- I know you
24 don't have it before you, but perhaps to even read that
25 language to you.

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1 That language says, "Upon the effective date and in
2 consideration of the distributions to be made hereunder, except
3 as otherwise expressly provided herein, the debtors shall be
4 discharged to the fullest extent permitted by Section 1141 of
5 the Bankruptcy Code", and then there are other provisos that I
6 don't believe anyone objected to, with respect to Kincade and
7 certain items like that, and we did add to the remainder of
8 that provision the language that had been requested by Ms.
9 Winthrop, on behalf of her client and their group. So --

10 THE COURT: Let me interrupt you a minute, Mr.
11 Karotkin, and offer the following. And the way we're
12 scheduled, in the afternoon today, Ms. Winthrop is on the list
13 and several of the other counsel for the groups. And to the
14 extent that I was able to divide the thing, it was mostly, not
15 entirely, people that have objected that aren't fire claimant
16 issues, though Ms. Winthrop and her cocounsel obviously are,
17 but their objections were significant. And they will have an
18 opportunity, when they speak, to confirm your view. I'm not
19 going to try to digest something that you just read to me.
20 During the mid --

21 MR. KAROTKIN: No, no.

22 THE COURT: -- during the midday break, I will be able
23 to get a copy of that and least look at it in hardcopy. And to
24 the extent that you're able to do it, it would be helpful to me
25 if you can kind of update the grid, the table, overnight or

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1 between today and tomorrow.

2 MR. KAROTKIN: Right.

3 THE COURT: And then I, based upon your time estimates
4 and whatever we have to do, we will figure out if anybody wants
5 to take issue with you after they've had an opportunity to see
6 what you've filed, and we'll make it work. And similarly,
7 we'll make work what you suggested about having to -- to where
8 to place the arguments on the executory contract issues.

9 MR. KAROTKIN: Okay.

10 THE COURT: Okay? Good.

11 MR. KAROTKIN: Thank you, sir. And we apologize for
12 not being able to get you that chart earlier or to --

13 THE COURT: You don't have to apologize. I don't need
14 anything more.

15 MR. KAROTKIN: Okay. Well, but we have been working
16 hard to try to limit the issues that you do have to decide, so.
17 So let me proceed, and I think perhaps it makes most sense, for
18 purposes of this morning, to start with the release exculpation
19 and discharge provisions because that seems to have attracted a
20 lot of attention.

21 And as I said earlier, Your Honor, we believe that,
22 particularly with the modifications that we've made to the
23 plan, that these objections, to the extent relevant, have been
24 addressed. You will be able to look at them and the other
25 parties will be able to look at them. We believe, in fact,

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1 that the original provisions were quite customary, but again,
2 in an effort to resolve objections, we have made modifications
3 and, again, we can look at those later, but let me start with
4 the releases.

5 And first, to be perfectly clear, Your Honor, there
6 are no involuntary, third-party releases in this plan. None.
7 It could not be clearer. In fact, Your Honor, if you may
8 recall, we covered this a few months ago in connection with
9 hearings on the disclosure statement and the prior iteration of
10 the plan that was filed. The plan was modified to be strictly
11 in compliance with the law in this circuit. The only
12 third-party releases in this plan are purely an affirmative
13 opt-in. It could not be clearer in both the disclosure
14 statement, the plan, and the ballots; fully consistent with
15 Ninth Circuit law.

16 But again, to make it even clearer, in section 10.9 --
17 excuse me -- which deals with third-party releases and has
18 clarifying language, we have revised it to include all of the
19 language that has been suggested by the Adventist Group, and I
20 think, as you noted in your docket order, I believe, last
21 evening. All of that language that they have requested in
22 section 10.9(c) has been added. So I think that would dispose
23 of any objection to the third-party releases.

24 We have also made it clear --

25 THE COURT: Excuse me, but you haven't heard from the

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1 U.S. Trustee, by any chance, yet, I take it?

2 MR. KAROTKIN: I have not.

3 THE COURT: Okay.

4 MR. KAROTKIN: Now, the U.S. Trustee has not --

5 THE COURT: Yeah, that's understandable.

6 MR. KAROTKIN: Yeah. I mean, I assume they haven't
7 seen the language yet --

8 THE COURT: Right.

9 MR. KAROTKIN: -- because we just filed it, but no, we
10 have not. We have not heard from the U.S. Trustee.

11 THE COURT: Okay. Well, they'll have an opportunity
12 to be heard, too.

13 MR. KAROTKIN: We have also made it clear, in the
14 proposed confirmation order, that neither the plan nor the
15 confirmation order affects any valid right, such as setoff or
16 recoupment, addressing many of the objections that were raised,
17 nor will the plan or the confirmation prevent any party from
18 raising -- and it does not prevent for a waiver or a release of
19 any rights or defenses that could be asserted by, for example,
20 a contract counterparty or any other party if they were sued by
21 the fire victims trust. The fire victim trust, to the extent
22 it's getting an assignment of our causes of action, is getting
23 an assignment of what rights we have, subject to all defenses
24 that the other parties would have to assert against us. It
25 couldn't be any other way, and we have clarified that.

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1 With respect to the discharge issue, again, which is
2 really -- excuse me -- quite a large part of the remaining
3 objections. I said as -- what I did say is, in response to the
4 language -- I'm sorry -- in response to the objections, we have
5 modified section 10.3 to be entirely consistent with the
6 statutory language of Section 1141. You will see those words;
7 other people can see those words. We think that properly
8 addresses the scope of the discharge in section 10.3 of the
9 plan. Corresponding language would be included in the
10 confirmation order.

11 And with respect to the issues raised by the
12 governmental units with respect to Section 10.13, again, Your
13 Honor, we believe that the original language we had was quite
14 customary, language we have agreed to on other occasions with
15 governmental units. Nevertheless, nevertheless, as you will
16 note, in the amended plan that we have filed, we have modified
17 that language, making it clear that it covers affirmative
18 defenses, rights of set-off, eminent domain, which was raised
19 by a number of parties. Eminent domain is one of the listed
20 items in paragraph 10.13. And in addition, we have made it
21 clear, to the extent that it wasn't clear, I'm not sure it
22 wasn't clear, that nothing will prevent or enjoin a
23 governmental unit from asserting those rights enumerated in
24 section 10.13 in the appropriate forum, outside of the
25 bankruptcy court, if they so -- if they so choose.

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1 I know that Your Honor referred, in your docket order,
2 to some proposed language that was, I believe, filed by the
3 North -- I'm trying to remember exactly.

4 THE COURT: NCPA was the most outspoken in court.

5 MR. KAROTKIN: Yeah. And I will confess, Your Honor,
6 I tried read that provision and I couldn't get through it. It
7 was the most convoluted provision I've ever seen. You
8 criticized me the other day for double-negatives. I think this
9 had triple-negatives. I think that, Your Honor, if you really
10 read the language that some of these parties are proposing,
11 what they're effectively proposing, Your Honor, is that section
12 10.13 effectively exempt them entirely from the effects of this
13 Chapter 11 case. That as far as they're concerned, ignore the
14 Chapter 11 and any rights and causes of action or any claims
15 they have are -- simply ride through. That's not what happens,
16 and that's not how it works. As I said, the language has been
17 modified to appropriately address their legitimate concerns.

18 And this is not an issue of reinstating those claims.
19 This is an issue of what's appropriate under the Bankruptcy
20 Code -- what's appropriate, Your Honor -- what is appropriate
21 for the reorganized debtors -- the reorganized debtors, to be
22 faced with, in terms of ongoing liabilities not addressed in
23 the Chapter 11. And again, from the perspective of the
24 reorganized debtors and the perspective of their future
25 shareholders -- and Your Honor, that includes the fire victim

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1 trust, twenty percent or more shareholder -- there has to be
2 clarity coming out of the confirmation order as to what
3 liabilities potentially survive. That's critical to the
4 ongoing business, critical to the fire victims, who are going
5 to be depending on this stock and the liquidation and
6 monetization of this stock for their recovery, and moreover,
7 Your Honor, it's also important -- as Mr. Ziman testified the
8 other day, there is going to be an equity offering made,
9 assuming you confirm this plan, an equity offering, a market
10 offering to purchase equity to fund the plan.

11 Mind you, we have the backstop, so there's no issue as
12 to whether we have the money, but there will be a marketed
13 offering, mostly likely, to try to raise that money at better
14 prices. And all of those people who might participate in that
15 marketing offering -- there are 300 people on this phone, I
16 believe. All of those people are listening to this hearing and
17 they're interested in what liabilities this reorganized debtor
18 is going to be saddled with, and that is why we have been very
19 careful as to what is in section 10.13. We believe it is
20 entirely appropriate. It goes beyond what is customary.

21 And I will say, Your Honor, one thing that -- you sent
22 that docket order out late last night here on the east coast,
23 and I will say, one thing that kept me up last night is the
24 reference that you had in that docket order in number --
25 paragraph number 2, with respect to proposed language of 10.13

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1 by NCPA, where you said, what's objectionable about that to all
2 governmental units, and then you said, or as to all parties?

3 THE COURT: I did say that. I --

4 MR. KAROTKIN: Yes. And I will say that I was very
5 surprised by that. I don't think that it in any way should go
6 beyond governmental units. And in effect, if it were to do so,
7 Your Honor, I think that we would be confusing reinstatement
8 with unimpairment, and that is not what the statute says.
9 Unimpairment is unimpairment, reinstatement is reinstatement,
10 and I think that that issue, Your Honor, was addressed in
11 connection with the post-petition interest hearings before you,
12 where the argument was made that unimpairment means
13 reinstatement, with respect to interest.

14 You appropriately rejected that in your decision, and
15 for that type of provision to extend beyond governmental units
16 would be a serious mistake, in my view, and would
17 inappropriately expand what rights unimpaired creditors have
18 and what claims they could potentially assert subsequent to
19 this Chapter 11 being concluded and the effective date of the
20 plan, and would be entirely inappropriate.

21 But as I said, we have modified 10.3, we have modified
22 10.9, we have modified 10.13, and we believe that those
23 provisions appropriately reflect the scope of discharge in
24 these cases and clarify third-party releases, reserve rights of
25 setoff and recoupment, reserve defenses, with respect to

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1 litigation that may be brought against claimants, and address
2 the concerns raised by the parties as to those objections, as
3 well as the interpretation section of the plan.

4 And we would ask you, Your Honor, to take a look at
5 those provisions. We will be prepared to address any issues
6 that the other parties may raise with respect to those issues,
7 and I would now like to move on to the exculpation provision,
8 which also has been raised, I don't think very seriously by
9 anybody, but section 10.8 of the plan is the exculpation
10 provision and is set forth in our memorandum.

11 That again, I hate to belabor the point, but another
12 customary provision, I'm sure you have seen it many times.
13 It's appropriately circumscribed. It applies only to estate
14 fiduciaries and certain other parties who are instrumental to
15 the negotiation and formulation of the plan and building the
16 consensus that has been achieved in these cases, as set forth
17 in our memorandum. The provision is entirely consistent with
18 applicable law in this circuit and the provisions are
19 appropriately limited to exculpation, solely with respect to
20 actions taken in connection with the administration of the
21 Chapter 11 cases, not any pre-petition conduct, and those
22 provisions expressly exclude fraud and willful misconduct.

23 And I will note that the section 10.13 proposed by --
24 I keep forgetting the name of the party -- Northern California
25 Power --

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1 THE COURT: NCPA. We'll call it NCPA.

2 MR. KAROTKIN: -- would even eliminate that
3 protection. Again, for no reason and totally inappropriate, as
4 the way I read. Why --

5 THE COURT: Why doesn't it -- why does it exonerate
6 garden-variety negligence? I mean, there's --

7 MR. KAROTKIN: In connection with -- in connection
8 with the administration of the case.

9 THE COURT: Right.

10 MR. KAROTKIN: It's limited to activities in
11 connection with the administration of this case. Again,
12 there's nothing --

13 THE COURT: I know, but the point is this is
14 consistent with all of my thinking for years and years and
15 years about employment of professionals and why the investment
16 bankers don't like me --

17 MR. KAROTKIN: Right.

18 THE COURT: -- because I don't like indemnity against
19 negligence. So why should the exculpation clause have a
20 carve-out for gross negligence, but not for negligence?

21 MR. KAROTKIN: Again, Your Honor, this goes beyond
22 just professionals. This goes for members of the creditors --
23 members of the tort committee, officers and directors --

24 THE COURT: Oh, I know.

25 MR. KAROTKIN: -- anyone involved in the negotiation.

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1 Your Honor, again, this is customary language. This is not
2 something we invented for this case. This is language that has
3 been accepted in confirmation orders entered by courts around
4 the country. I wouldn't be surprised if you've accepted that
5 language in confirmation orders that you have entered.

6 THE COURT: Probably did it in the first case here.

7 MR. KAROTKIN: Probably. Again, we're not asking for
8 anything unusual, but we think these people are entitled to
9 protection from lawsuits with respect to what they did in --
10 what activities they undertook in this case to get to the
11 consensus we've reached, and I'll leave it at that.

12 And quickly, with respect to the tort committee
13 objection, the remaining tort committee objection. And --
14 excuse me -- again, as we noted, Your Honor, that as a result
15 of stipulation entered into between the plan proponents and the
16 fire claimants' committee, all but one of those objections has
17 been resolved.

18 THE COURT: Is the remaining one really an objection
19 or is it just something that just needs to be taken care of?
20 In other words --

21 MR. KAROTKIN: Well, let me try to explain.

22 THE COURT: -- let me put it this way. Could I
23 confirm this plan if that rights agreement matter is still
24 unresolved?

25 MR. KAROTKIN: I think you could. I don't think the

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1 plan could go effective without it being resolved, necessarily.
2 I think that -- I think that I was advised that ongoing
3 negotiations with respect to that registration rights agreement
4 are taking place and, in fact, I'm advised that yesterday and
5 last evening there was quite a long negotiation session that
6 I'm told was constructive. I am hopeful -- although I can't be
7 sure that that will be resolved consensually in short order,
8 but I would suggest we defer further consideration of that, if
9 necessary, until Friday, when perhaps we have more visibility
10 on exactly what's happening here.

11 THE COURT: Well, I hit -- in my wisdom, I put Mr.
12 Julian on to argue on Friday anyway, so I'm going to hope that
13 he's off negotiating and mediating and doing the right thing.
14 So okay. It's deferred. Your point is that maybe I could
15 confirm the plan, but if the plan couldn't become effective,
16 obviously, that's kind of a Pyrrhic victory. So let's just not
17 worry about it this morning.

18 MR. KAROTKIN: Okay. Thank you.

19 Now, I'd like to turn briefly, Your Honor, to the
20 provisions of Section 1129(a) and the evidence before the Court
21 with respect to compliance with those sections. Mr. Wells'
22 declaration addressed each of the requirements of Section
23 1129(a) and the declarations of Mr. Boken, Mr. Ziman, Ms.
24 Pullo, complimented Mr. Wells' declaration. And taken
25 together, Your Honor, they demonstrate compliance with all of

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1 those provisions. That evidence is before the Court and,
2 again, that evidence is not controverted.

3 I don't think, Your Honor, it's necessary to touch on
4 all of the elements of 1129(a)(1). They are set forth in
5 detail in the declarations as well as in our memorandum in
6 support of confirmation, but I would like to touch on certain
7 of the more well-known requirements in Section 1129(a), more
8 specifically, good faith classification, feasibility,
9 solicitation, and the best-interest of creditors test. And I
10 will try to go through those relatively quickly, and first
11 starting, Your Honor, with good faith.

12 And I think with respect to the issue of good faith,
13 the record of these cases -- and Your Honor, you're closer to
14 this than anybody -- including the settlements negotiated and
15 approved with the subrogation claimants, with the tort claimant
16 committee, with the noteholders and the noteholder RSA, the
17 support of the Governor's office, the settlements with the DOJ
18 and the California State entities with respect to their claims
19 in these cases, the CPUC approval of the plan, all of those
20 items, Your Honor, and again the entire record of this case
21 demonstrate that the plan satisfies the good faith requirement.

22 It's the product of arm's length and good faith
23 negotiations as demonstrated in the declarations, satisfies the
24 requirements of AB 1054. Perhaps most importantly, as I
25 emphasized earlier, will expedite distribution to wildfire

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1 victims and will result in the debtors being able to
2 participate in the go forward Wildfire Fund assuring -- I'm
3 sorry -- assuring, as well as in connection with the wildfire
4 mitigation plans and expenditures -- the billions of dollars of
5 expenditures that were testified to, assuring the long-term
6 viability of these debtors going forward.

7 The plan certainly is consistent with the objectives
8 of Chapter 11, and deals with creditors in a fundamentally fair
9 manner as evidenced, Your Honor, by the overwhelming vote in
10 favor of the plan by those classes. Under these circumstances,
11 we believe our burden as to good faith has easily been
12 satisfied.

13 With respect to classification, the evidence,
14 principally Mr. Wells' declaration, also demonstrates that the
15 plan's classification is proper. As this Court is well aware,
16 plan proponents -- and the law is clear in this circuit, plan
17 proponents have broad discretion to classify claims and
18 interests, and claims, despite being substantially similar, and
19 indeed, arising from the same underlying circumstances may be
20 classified separately. There's no dispute about that.

21 All that is required under the applicable law, Your
22 Honor, is a business or economic justification to do so, which
23 has been demonstrated in Mr. Wells' declaration and in the
24 dynamics in negotiating history of these cases.

25 As the number one --

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1 THE COURT: I think to some extent, I've already
2 agreed with you on that point insofar as the objectors on the
3 trust documents. Admittedly, that doesn't -- it didn't involve
4 other objectors and they didn't participate, but I think I
5 essentially agreed with that conclusion, didn't I?

6 MR. KAROTKIN: Yes, I think you did.

7 THE COURT: Yeah, right. Okay.

8 MR. KAROTKIN: And I thank you for helping me in that
9 regard.

10 Again, as noted by Mr. Wells in his declaration, the
11 subrogation claims have a different legal basis for liability
12 than the other claims that are held by insurance companies and
13 financial institutions, and the debtors, as he testified,
14 historically have negotiated separately with subrogation
15 claimants in addressing their liability with wildfires pre-
16 petition. Their claims are not unliquidated, and do not have
17 the aspects of personal injury and property damage that makes
18 up the fire victim class, and in fact, the separate nature of
19 the fire victim class, Your Honor, has been recognized since
20 the inception of these cases with the appointment of the TCC as
21 a statutory committee with no members -- no subrogation
22 claimants as members, and with no fiduciary duty as to
23 subrogation claimants.

24 The public entity claims are also distinct, they are
25 the major -- they are held by the major municipalities that

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1 were devastated by the fires, and those other municipalities
2 with which the debtors have ongoing relationships and critical
3 ongoing relationships with respect to their equipment. Their
4 rebuild efforts, and also PSPS coordination going forward.
5 Their claims are logically distinct from other so-called public
6 entities, like for example, the State of California and the
7 DOJ. Those claims are not damage claims, but more
8 reimbursement types of claims for monies expended by those
9 agencies either on victims or to put out the fires or --
10 including, for example, CAL FIRE and the efforts it made in
11 connection with the pre-petition fires.

12 I would say, Your Honor, taken as a whole, the plan
13 classification recognizes these differences as they were
14 reflected, Your Honor, in the actual negotiations that unfolded
15 in these cases and resulted in the consensus before you.

16 With respect to feasibility, 1129(a)(11), again I
17 don't want to repeat the standards. I'm sure you're well aware
18 of it, but feasibility addresses whether the plan has a
19 reasonable -- reasonable likelihood of success, not a guarantee
20 of success. As the case law indicates, Your Honor, speculative
21 prospects of failure cannot defeat feasibility, and the mere
22 prospect of uncertainty cannot defeat confirmation on
23 feasibility grounds.

24 The evidence on feasibility before Your Honor is
25 uncontroverted. Mr. Wells, Mr. Boken, Mr. Ziman, their

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1 declarations taken together demonstrate that not only do the
2 debtors have the committed financing to emerge from Chapter 11,
3 they have the financial resources to meet their obligations as
4 demonstrated by the financial projections which were included
5 in the disclosure statement.

6 I think, more importantly, or to emphasize that, Your
7 Honor, the testimony of all three of those individuals plainly
8 showed that the debtors will have more than adequate resources
9 to address all contingencies, including potential wildfire
10 liability by reason of -- as Mr. Ziman testified, and I believe
11 Mr. Wells, as well, by reason of a five billion dollars working
12 capital facility that will be in effect on the effective date
13 of the plan, by reason of insurance coverage that Mr. Wells
14 testified to with respect to the Kincaid fire, if -- and of
15 course this has not been determined yet -- if it is determined
16 that the debtors have liability with respect to that fire, and
17 Your Honor, also by reason of the debtors' ability to
18 participate in the go-forward wildfire fund. So going forward,
19 there is plenty of protection and assets and insurance in the
20 go-forward wildfire fund to address contingencies.

21 The testimony was also uncontroverted that the debtors
22 have implemented and continue to implement programs and
23 initiatives and spent billions of dollars to mitigate fire
24 risks, which together with, again, participation in the
25 wildfire fund, will minimize the financial risk to the debtors

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on an ongoing basis after their emerging from Chapter 11.

The testimony, Your Honor, was also uncontroverted, and was clear, that in the unlikely event that the rescission and damage claims -- and I'm now talking not about the equity and rescission damage claims, but the debtor rescission and damage claims, that in the unlikely event they are allowed -- and Your Honor, I would note, that will be quite -- if that ever happens, that will be quite a number of months from now, or perhaps longer. And if they are allowed, which the debtors believe are unlikely, and Your Honor, if those claims exceed insurance coverage, again unlikely, the reorganized debtor will have more than adequate resources including the reserve contingency testified to by Mr. Boken, which I believe was in excess of 300 million dollars, and as testified by Mr. Ziman, the five-billion-dollar post-petition working capital facility, as well -- again, as well as testified to by both Mr. Ziman, and Mr. Wells, access to the capital markets going forward if it is necessary.

There is more than ample resources to address these contingencies in the unlikely event that they arise. That is not an impediment to confirmation. It is not an impediment to a determination by Your Honor that this plan is feasible.

As we indicated in our memorandum, the plan is also feasible from a regulatory perspective. As you know, the plan has been approved by the CPUC. It does have the support of the

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1 Governor's Office. It is fully compliant with AB 1054. It is
2 ready to move forward. It has the committed financing, and
3 these cases are poised, Your Honor, for distributions to begin
4 to wildfire victims and to other claimants who are entitled to
5 those --

6 THE COURT: On the subject of AB 1054, is it your
7 expectation that the -- either the conclusion to law or the
8 order will make this court's determination that 1054 had been
9 complied with, or is that simply deferred to the governor?

10 MR. KAROTKIN: No, that's --

11 THE COURT: Or is it both. Pardon me?

12 MR. KAROTKIN: As I understand it, Your Honor, there
13 is one determination that you have to make.

14 THE COURT: Okay. Well, I mean, I think both have to
15 make it. I mean, if I --

16 MR. KAROTKIN: I don't think the governor has to make
17 any determinations. I think that's with the CPUC, and I
18 believe that those determinations have already been made.

19 THE COURT: Okay.

20 MR. KAROTKIN: And if I'm mistaken --

21 THE COURT: One --

22 MR. KAROTKIN: -- I will correct it.

23 THE COURT: This is slightly out of order, but one
24 determination that I don't make is what Judge Donato's supposed
25 to do. And at least as of this morning, I didn't see anything

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1 on the docket. So can I make -- can I confirm the plan before
2 we hear from him on that issue?

3 MR. KAROTKIN: I believe you can. I believe you can,
4 Your Honor. I believe you can confirm the plan. I don't
5 believe that that's a prerequisite to confirmation in view of
6 the plan, in view of the flag -- sorry, in view of the fact
7 that the plan has been accepted by the wildfire claimants.

8 THE COURT: Okay. Well, I don't know -- obviously,
9 Judge Donato and I don't communicate. I suspect he's going to
10 issue a ruling one of these days, and he, like me, and like
11 everyone else, is inconvenienced by the shelter in place and
12 all the other things that are going on, including downtown San
13 Francisco, like downtown New York --

14 MR. KAROTKIN: Yes, sir.

15 THE COURT: -- but that I presume he'll issue
16 something in due course, and fairly soon.

17 MR. KAROTKIN: Okay. With respect to another item
18 under Section 1129(a), which is solicitation, again the
19 testimony is uncontroverted. Ms. Pullo's declaration in
20 cross-examination testimony plainly demonstrates that the
21 solicitation of votes on the plan was conducted in strict
22 compliance with the solicitation procedures and the disclosure
23 statement, each of which were approved by the Court after
24 numerous hearings.

25 The votes were properly tabulated and the results were

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1 certified to the Court. Your Honor, you've already addressed
2 and rejected a prior motion to designate votes, and no evidence
3 has been presented -- no evidence that in any way undermines
4 the integrity of the solicitation and voting process.

5 And I think it's important to mention a couple of
6 things in that regard that were raised by Mr. Abrams and by Ms.
7 Wallace in connection with Ms. Pullo's testimony, and I think
8 that, as I go through it, Your Honor, these items will plainly
9 demonstrate the complete lack of substance to their challenges
10 to the voting process and that they raised unfounded
11 allegations simply because they don't like the fact -- they
12 don't like the plan treatment, and that it was overwhelmingly
13 accepted by their constituency.

14 First, Your Honor, and I really don't want to belabor
15 these points but I think it's important to advise the Court of
16 what's going on. As demonstrated in our recent pleading in
17 opposition to the motion through the examiner, which was filed
18 last evening, Mr. Abrams' insinuations that Prime Clerk had a
19 conflict of interest because Duff & Phelps, its owner, is a
20 PG&E shareholder, is absolutely preposterous. And Mr. Abrams
21 must have known that when he raised that issue, and I'll tell
22 you why, because number one, the Duff & Phelps entity that at
23 one time owned stock of PG&E was a complete separate and
24 distinct entity.

25 Number two, and I am quite sure Mr. Abrams must've

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1 known this, as well, that unrelated entity had disposed of its
2 PG&E stock a year before the Chapter 11 case was commenced. So
3 not only was it unrelated, that entity didn't own, and disposed
4 of all of its stock a year before the case was commenced. Now,
5 how that could be any evidence of a conflict or how Mr. Abrams
6 could raise that as a conflict, I think, goes to the bona fides
7 of his objections to confirmation.

8 But more personal to me, Your Honor, and to my
9 personal integrity are Ms. Wallace's allegations regarding my
10 son, who works at Prime Clerk. The least bit of due diligence
11 by Ms. Wallace would have revealed to her that this
12 relationship was fully disclosed in my firm's retention
13 application at the inception of this case and in Prime Clerk's
14 retention application. Your Honor, these types of insinuations
15 should not be tolerated.

16 Again, Your Honor, the undisputed and uncontroverted
17 evidence -- and I emphasize evidence, demonstrates full
18 compliance with your approved solicitation procedures,
19 solicitation procedures developed collaboratively with the TCC,
20 as the fiduciary, for fire claimants. There is no basis for
21 any other conclusion.

22 We would like to --

23 THE COURT: Well, Mr. Karotkin, during the questioning
24 and the argument by Ms. Wallace, I was surprised to hear about
25 the statement about your son, and I had in my mind, and I

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1 thought he must -- meaning you, must've disclosed it, and of
2 course you did. And I verified it, and you verified it, and
3 well, I'm glad you did. So to me, it's a closed subject. If
4 Ms. Wallace or anyone else wants to revisit it, they'll -- I
5 can't prevent them, but I'm not going to do anything about it
6 because you've made the disclosures, and I'm satisfied, so.

7 MR. KAROTKIN: Thank you, sir. I appreciate that.

8 With respect to the best interest test, Your Honor, as
9 you noted, I believe, during the hearing to consider approval
10 of the disclosure statement, there's no possible dispute about
11 this issue in these cases, and although I know it's a
12 requirement that must be satisfied for confirmation, for
13 obvious reasons, no party -- no party has raised any issue with
14 respect to compliance with the best interest of creditor's test
15 under Section 1129(a)(7).

16 Nevertheless, Mr. Boken's declaration fully covers the
17 issue, and suffice it to say, as set forth in his declaration,
18 as well as in the disclosure statement, a Chapter 7 liquidation
19 hearing would be so value destructive to all parties-in-
20 interest, and so time consuming in view of, among other things,
21 all of the regulatory approvals that would be required to
22 dispose of these assets, that any distributions would not only
23 be substantially less, they likely would not take place for
24 years, and I mean several years.

25 And with the loss of the ability to participate in the

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1 go-forward Wildfire Fund, and the additional claims that would
2 be asserted based on -- under those circumstances, the
3 termination of all of the restructuring support agreements, all
4 of the RSA, satisfaction of the best interest test is not even
5 a close call, particularly, Your Honor, as you know, where most
6 of the claims here are being paid in full with interest or
7 reinstated. So I don't even think that's an issue.

8 Lastly, just very quickly, as I said, I've addressed
9 the discharge, and the exculpation and the relief provisions,
10 and I think as I've said, we've addressed those in our
11 revised -- in the proposed revisions to the plan.

12 THE COURT: What about my earlier of the two docket
13 texts, saying why are we even worrying about Rule 9019 and
14 compromise, when we have a consensual -- I mean, a binding plan
15 on nonvoting classes?

16 MR. KAROTKIN: I think, Your Honor, as I mentioned
17 earlier, that particular language was in Section 6.1 of the
18 plan, which I think I told you we have --

19 THE COURT: Okay.

20 MR. KAROTKIN: -- deleted entirely.

21 THE COURT: You did tell me, but remember I haven't
22 had a chance to match it up. I take your word for it, that's
23 fine.

24 MR. KAROTKIN: I know. Yes, I was just -- I was
25 trying to just tell you we did address that point --

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1 THE COURT: Right, right.

2 MR. KAROTKIN: -- that you had raised.

3 And lastly, before I turn the proceedings over to --
4 well, actually two last things before I turn the proceedings
5 over to Mr. Johnston, certain fire victims have raised
6 objections to confirmation based on allegations relating to the
7 consideration to be transferred to the fire victim trust under
8 the plan, and I think it's sufficient to say that the
9 disclosure statement more than adequately described the
10 consideration to be transferred to the trust under the plan,
11 including the stock element of that consideration and a
12 detailed discussion in a number of places as to its potential
13 fluctuation in value.

14 The class of fire victims has voted overwhelmingly to
15 accept the plan, and I believe that dispenses with those
16 allegations or those objections.

17 And lastly, the objection filed by the California
18 State Franchise Tax Board. First, we have made a number -- or
19 a few modifications to the plan to address their concerns. We
20 think that fully addresses their concerns and that those claims
21 are properly treated under the plan. Frankly, Your Honor, I
22 was surprised that they could possibly have any objections to
23 confirmation. If there are any remaining objections they have
24 after they review this language, I know that they will have an
25 opportunity to speak, and I would just say we would reserve --

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1 rather than get into that now, we would reserve rebuttal to
2 just address that. I think that that should be easily disposed
3 of.

4 THE COURT: Well, I have Ms. Porter from the Franchise
5 Tax Board on the speakers' list for tomorrow.

6 MR. KAROTKIN: Yes.

7 THE COURT: And if she still has an issue, you'll have
8 an opportunity to respond.

9 I would like you to go back for a minute. I
10 understand what's at issue, and what's been resolved
11 procedurally between the debtors and the TCC as far as the
12 formulation -- the so-called valuation formula for determining
13 the value of the stock, and -- but you would be -- I think the
14 parties who are paying attention to this case would be well
15 served if you would just give a brief summary, not of what the
16 outcome's going to be, but how it's going to be resolved. Do
17 you understand my point?

18 MR. KAROTKIN: I think you're talking about what
19 people are calling NENI?

20 THE COURT: What's going to be arbitrated, and what's
21 at issue --

22 MR. KAROTKIN: Right, okay.

23 THE COURT: -- and how -- in other words, there's been
24 a lot of discussion, and you're aware, I'm sure, of people that
25 have taken great umbrage with the suggestion that 6.75 billion

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1 dollars' worth of stock is going into the trust, and you have
2 over -- many times made the point that it's a formula.

3 MR. KAROTKIN: Right.

4 THE COURT: And what I read from the stipulation
5 between the debtors and the TCC is that dispute about the
6 formula is going to be resolved by someone else. And all I
7 would like you to do is summarize briefly -- I mean, you know,
8 I'm talking about two minutes -- as to what issues have been
9 teed up and are going to be resolved by that process. Can you
10 do that?

11 MR. KAROTKIN: I think I can. Can you give me one
12 second?

13 THE COURT: Sure.

14 MR. KAROTKIN: Okay. Under the plan, there is a term
15 called, "aggregate fire victim consideration", which is the
16 defined term for what is to be transferred to the Fire Victim
17 Trust pursuant to the plan. And one of those elements in
18 subsection C of that defined term is 6.75 billion in new HoldCo
19 common stock issued at, defined term, "fire victim equity
20 value".

21 And "fire victim equity value" is a defined term under
22 the plan, which means, and I'm quoting from Section 1.81 of the
23 plan, which means, 14.9 multiplied by the, again defined term,
24 "normalized estimated net income" as of a date to be agreed
25 upon among the parties to the tort claimants' RSA. So

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1 normalized estimated net income is what people commonly refer
2 to as NENI. And normalized -- of course, then there's another
3 definition for normalized estimated net income in the plan.

4 THE COURT: Yeah, I don't -- Mr. Karotkin, I don't
5 need you to go and read the definition, just in a laymen's
6 sense, how is it going to be resolved?

7 MR. KAROTKIN: Oh, it's going to be -- the parties
8 have agreed to have that submitted to binding arbitration
9 commencing next week. I believe it's already been set for
10 Monday and Tuesday of next week, before one of the JAMS
11 arbitrators that has been agreed to. I forgot the --

12 THE COURT: I think it's Mr. Mayer (sic).

13 MR. KAROTKIN: Meyer, Meyer, Meyer.

14 THE COURT: Yes.

15 MR. KAROTKIN: Yes, before Mr. Meyer. It will be
16 submitted to him to make a decision that will be binding.

17 THE COURT: But am I understanding that Mr. Meyer will
18 make a decision. The two sides have agreed to be bound, and
19 that decision will plug in the number to do the math --

20 MR. KAROTKIN: Yes.

21 THE COURT: -- to lead to the result?

22 MR. KAROTKIN: Yes, sir.

23 THE COURT: Okay. That's --

24 MR. KAROTKIN: Exactly.

25 THE COURT: -- all I wanted you to explain.

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1 MR. KAROTKIN: Okay.

2 THE COURT: That's all I was looking for --

3 MR. KAROTKIN: Right.

4 THE COURT: That's what I understood to be the case,
5 but because this is one of those things that I think is a
6 combination of complex financial terms and complex legal
7 terminology, but I'd like -- I want it translated to, at the
8 end of the day, the arbitrator will say, X is the number that
9 pegs, in a laymen's term, the value of the stock going into the
10 trust.

11 MR. KAROTKIN: I think that's right, Your Honor. I
12 think that may be said a little differently --

13 THE COURT: Okay.

14 MR. KAROTKIN: -- is that when Mr. Meyer has rendered
15 his decision, that amount will be easily calculated.

16 THE COURT: Okay, good enough.

17 MR. KAROTKIN: Okay. But I believe, unless I've
18 missed something, that would complete my portion, and I would
19 turn the microphone over to Mr. Johnston, who was going to
20 address the cramdown issues.

21 THE COURT: Okay. I thought Mr. Tsekerides wants to
22 be heard, but if not --

23 MR. TSEKERIDES: Well, the only thing I -- Your Honor,
24 the only thing I was going to say is -- Ted Tsekerides for the
25 debtors.

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1 I was going to deal with the things that we're putting
2 off until Friday. So if it's all right, I'm just going to turn
3 my video off.

4 THE COURT: That's fine.

5 MR. TSEKERIDES: Okay.

6 THE COURT: Goodbye.

7 MR. TSEKERIDES: Bye.

8 THE COURT: All right. Ms. Parada, we'll bring in Mr.
9 Johnston, and I guess we don't need to have Mr. Tsekerides on
10 the panel.

11 Mr. Johnston, can you hear me and see me?

12 MR. JOHNSTON: I can hear you, Your Honor. Good
13 morning.

14 THE COURT: Good morning. Okay. Your turn to join
15 Mr. Karotkin on the opening arguments.

16 MR. JOHNSTON: Okay. Jim Johnston of Jones Day on
17 behalf of the shareholder proponents.

18 I apologize for the glare on me, the side of the
19 screen there. I've got my camera angled as far away from the
20 window as possible, but hopefully you can see me okay.

21 Your Honor, the shareholder proponents obviously
22 support the plan, and we do urge you to confirm it for all the
23 reasons that Mr. Karotkin stated. This morning I'm going to
24 talk about the securities fraud equity claims that are
25 classified in the Class 10A-II of the plan.

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1 Mr. Karotkin stole my thunder a bit, but I do think
2 it's worth, at the outset, reiterating two points. The first
3 is that Class 10A-II voted to accept the plan by number. Of
4 the claimants who voted, more than 67 percent cast ballots in
5 favor of the plan.

6 However, because the tabulation methodology required
7 the debtors to count the face amounts of proofs of claim in
8 this class, many of which, I have to say, bear no relation
9 whatsoever to any potential actual allowed claim, a few large
10 holders caused the class to reject by amount. I think it was
11 fifty-eight percent to forty-two percent.

12 Second point worth noting at the outset is that the
13 treatment of this class drew exactly one and only one objection
14 by the Public Employees Association of New Mexico, or PERA.
15 PERA likes to hold itself out as the "lead" plaintiff in a
16 class action, when in fact no class has been certified. PERA
17 acts on behalf of itself, and only itself.

18 And PERA's latest proof of claim, which was filed
19 pursuant to the extended bar date procedures that Your Honor
20 adopted, asserts a claim in the amount of 119,134 dollars. So
21 although you will undoubtedly hear about hundreds of millions,
22 or even billions of dollars of alleged claim, that should give
23 you an idea of what we're actually dealing with here; a single
24 objector with a disputed claim for about 120,000 in alleged
25 losses.

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1 So let's talk about that objection. For a bankruptcy
2 nerd like me, Class 10A-II actually presents an interesting
3 issue. Everyone agrees that the claims in Class 10A-II are
4 subordinated by operation of Section 510(b) of the Bankruptcy
5 Code, to the level of PG&E common stock.

6 THE COURT: Well, PERA doesn't question that. They
7 accept that.

8 MR. JOHNSTON: Agreed.

9 THE COURT: Yeah.

10 MR. JOHNSTON: And so, in the words of the statute,
11 their claim, and the other claims in this class has the "same
12 priority as common stock". The challenge is figuring out what
13 that means in the context of a solvent debtor. Normally, the
14 subordination issue is easy to deal with because equity's out
15 of the money. And when equity's out of the money, the 510(b)
16 claims are out of the money, so there's nothing to do.

17 And fortunately for all concerned, that's not the case
18 here. We have a solvent debtor. So we have to figure out how
19 subordinated securities fraud claims denominated in dollars,
20 are to share with existing common stockholders whose interests
21 are counted in shares.

22 There are a handful of cases that have dealt with
23 510(b) claims against a solvent debtor. They say that the plan
24 of the solvent debtor should provide for the 510(b) claims to
25 share proportionately with equity, and you can see that in the

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1 American Solar King case, 90 B.R. 808, where the existing
2 equity retained interest and new shares were issued to the
3 fraud claimant. Same thing happened in Kaiser, 326 B.R. 265,
4 and in Orange County Nursery, 2019 Westlaw 3973869.

5 But none of those questions provide any relevant
6 guidance for how the fraud claimant must share with equity. So
7 I submit we're running on a pretty open field here, and you do
8 have a fair bit of discretion to achieve an equitable result.

9 So let me explain what the plan does, first.

10 THE COURT: Well, can I interrupt for just a second?
11 Is that something that's a confirmation issue? I mean, I'll
12 listen to your argument, and I'm sure I'll hear from the other
13 side, but I don't have to decide that exact answer now, do I?

14 MR. JOHNSTON: You have to decide whether the plan's
15 treatment of Class 10A-II is appropriate under the Bankruptcy
16 Code because an objection has been lodged to that treatment.

17 THE COURT: Well, but appropriate isn't the test. Is
18 it fair and equitable?

19 MR. JOHNSTON: Fair and equitable is not the test, and
20 there has been no fair and equitable objection raised. There
21 has been an unfair discrimination objection raised, which I
22 will touch upon.

23 THE COURT: Okay.

24 MR. JOHNSTON: But the primary objection raised by
25 PERA, which we will get into, has to do with the sharing

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1 formula under the plan, the question that I'm setting up here,
2 which is how does equity share with the 510(b) subordinated
3 claims.

4 THE COURT: Okay.

5 MR. JOHNSTON: Okay. So our plan proceeds from the
6 premise that the proportionate sharing among the 510(b) fraud
7 claimant and the shareholders, has to be determined with
8 reference to a baseline. PG&E's market capitalization that
9 includes both the intrinsic value of PG&E and the "artificially
10 inflated value" that serves as the premise for the fraud claim.

11 In essence, the fraud seeks to -- excuse me, the plan
12 seeks to give the fraud claimants, like PERA, the benefit of
13 their bargain by restoring them to the position of what they
14 say they thought they were buying when they invested in PG&E
15 stock. And I think the best way to understand this is
16 visually, so I've got a demonstrative that I can pull up on the
17 screen, which I will do so.

18 THE COURT: Okay. Go ahead.

19 MR. JOHNSTON: Got it. Let me know if you can see it,
20 if you need me to amplify it.

21 THE COURT: I can see it.

22 MR. JOHNSTON: Okay. And we can put this on the
23 docket after the argument today.

24 So the first slide here -- it's two slides. The first
25 one gives some context. The pie on the left here is the

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1 pre-disclosure capitalization. It's PG&E's market
2 capitalization right before what PERA says is the first
3 disclosure of the alleged fraud on October 12, 2017.

4 Now October 12, 2017 is a date that comes straight
5 from PERA's complaint. The complaint alleges that, despite the
6 2007 Witch Fire started by San Diego Gas and Electric and
7 despite the 2015 Butte Fire started by PG&E and despite the
8 ignition of the North Bay Fires four days earlier and despite
9 multiple, repeated risk disclosures in PG&E's securities
10 filing, "it was not until Thursday, October 12, 2017, that the
11 market began to understand that PG&E's safety regulation
12 violations were a likely major cause of the fires".

13 They're saying they just began to learn on October 12.
14 That quote's straight from PERA's amended complaint at
15 paragraph 246. And you can see many similar allegations about
16 October 12 called out on pages 59 to 60 of our brief which
17 quotes other passages directly from the complaint.

18 So PG&E's pre-disclosure market capitalization is the
19 baseline or the denominator for the plan-sharing formula.

20 THE COURT: And I can't see the number on the screen.

21 MR. JOHNSTON: Okay.

22 THE COURT: Maybe if you can try expanding a bit. All
23 right, right there -- no, there you go. Oh, no to the left,
24 where that little plus line.

25 MR. JOHNSTON: Oh, that one.

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1 THE COURT: Well, read me that number --

2 MR. JOHNSTON: Want --

3 THE COURT: -- they were -- are those numbers in your
4 brief?

5 MR. JOHNSTON: They're --

6 THE COURT: Okay, that's thirty-five billion?

7 MR. JOHNSTON: There you go.

8 THE COURT: That's thirty-five billion?

9 MR. JOHNSTON: It is, right.

10 THE COURT: Thirty-five billion, right?

11 MR. JOHNSTON: That -- it is 35.9 billion dollars.

12 THE COURT: Okay.

13 MR. JOHNSTON: That is the denominator in the
14 plan-sharing formula which because we like to use the maximum
15 number of words possible for every concept, the plan calls the
16 HoldCo rescission or damage claim share. Today I'm just going
17 to call that the formula, or the plan formula.

18 So the formula has the denominator equal to the
19 capitalization of PG&E immediately before the alleged fraud
20 allegedly was revealed. That's the pie on the left, PG&E's
21 market capitalization when the market opened on October 12,
22 2017, roughly 35.9 billion dollars. That pie includes PG&E's
23 intrinsic value, and whatever portion of the capitalization was
24 "artificially inflated".

25 Now you see the orange slice there in that pie on the

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left of roughly 6 billion dollars?

THE COURT: I do.

MR. JOHNSTON: That's the market capitalization that PG&E lost from the market open on October 12 to the market close on October 13, the period immediately after PERA says the alleged fraud was revealed. Hold that thought and I will get back to it in a minute.

Now look at the pie on the right. That is PG&E's market capitalization on the petition date, roughly 7.3 billion dollars. It's much smaller, nearly five times so, and note that the orange slice is gone. Why is that? That's because the alleged fraud, the value that went down after the disclosures were made, is gone. There's no more "artificially inflated value" because the proverbial cat was let out of the bag.

THE COURT: Well, there was also major fires including the Camp Fire two weeks -- two months prior, right?

MR. JOHNSTON: Very much so, Your Honor, and that -- when these claims are actually adjudicated, that's one of the reasons why these claims are going to completely fall apart.

But the point to be made here is that as of the petition date, all of the disclosures that PERA said should've been made, and that were allegedly omitted, or misstated, were made. They were made by the close of the class period on November 15, 2018, before the petition date.

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1 So the question before us was how that orange slice
2 representing value lost to alleged fraud can share
3 proportionally with existing shareholders who've already seen
4 their interest shrink from the pie on the left, to the pie on
5 the right?

6 What the plan does, and what we submit is the only
7 logical and fair way to effectuate subordination, is to go back
8 to the point in time when the orange slice was actually part of
9 the pie. So the plan calculates the proportionate share of
10 PG&E's market capitalization that includes the damages alleged
11 by PERA in its complaint, the capitalization immediately before
12 the fraud was disclosed -- the alleged fraud.

13 Any other methodology including one based on market
14 capitalization as of the petition date, as PERA urges, would
15 massively overweight the fraud claims by including the alleged
16 fraud losses in the numerator, which is the amount of the
17 claim, but not in the denominator to determine proportionate
18 ownership. And the second page of my demonstrative shows this.
19 Let me get there, okay.

20 So what we have here is a hypothetical claimant who
21 buys at the opening price on October 12, 2017, right before the
22 alleged disclosure of fraud, and then sells the very next day.
23 Keep in mind that this purchase is made four days after the
24 North Bay Fires ignited on October 8, but our hypothetical
25 claimant goes ahead and makes a big purchase of PG&E common

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1 stock on October 12, and then turns around and sells the next
2 day.

3 We're obviously using very large numbers here, a
4 hundred million share purchase. We did that just so the
5 graphics are actually readable, the numbers scale down
6 proportionally as the share purchases scale down.

7 This hypothetical claimant lost about 1.15 billion
8 dollars on a two-day trade, which is about 3.22 percent of the
9 market capitalization on the day the claimant made its
10 investment in PG&E. You can see that little 3.22 percent
11 wedge.

12 Under the plan, the claimant will receive 3.22 percent
13 of the share base as of the petition date, exactly what the
14 claimant bargained for when it bought the stock. Under PERA's
15 methodology, which seeks to use capitalization as of the
16 petition date, the claimant would receive a whopping 18.31
17 percent of the share base as of the petition date. That's
18 nearly six times more. The claim would dilute common
19 shareholders by a factor of six. So that orange wedge goes
20 from a modest slice to a glutinous wedge.

21 With PERA's proposal, you'd have a shareholder who
22 thought it was buying 3.22 percent of the company, winding up
23 with 18.31 percent of the company before dilution of the new
24 stock under the plan. I submit that is self-evidently wrong,
25 and that's especially true when you compare the fraud claimant

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to shareholders generally.

In PERA's world, the fraud claimant gets a massive share of petition date ownership at the expense of all common shareholders, but those common shareholders already suffered massive value losses as the PG&E share price declined in the years prior to bankruptcy, as we saw in the first slide.

As the first page shows -- I'll put it back up -- the shareholder stake was already devalued by a factor of five between the time of the alleged fraud and the petition date, and now PERA would devalue them further by a factor of six.

THE COURT: Wait, repeat that please. I -- why was it diluted by a factor of five?

MR. JOHNSTON: It's -- that's showing --

THE COURT: I'm missing --

MR. JOHNSTON: -- that's showing the difference between the pie on the left, and the pie on the right. At the time the alleged fraud was disclosed, the capitalization was thirty-five billion dollars. If you take a --

THE COURT: Okay.

MR. JOHNSTON: -- shareholder as of that date, and compare its proportionate interest in the company, or its value, and then compare it to the pie on the right, it went down nearly five times.

THE COURT: But if there was no fraud at all, the same 35.9 would have gone down to seven because of the fires.

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1 MR. JOHNSTON: That's correct.

2 THE COURT: Right?

3 MR. JOHNSTON: And that's what --

4 THE COURT: My thought --

5 MR. JOHNSTON: -- we --

6 THE COURT: It's the circumstances out in the world,
7 and the fires, and whoever -- you know, whatever other market
8 forces existed, that made that big blue pie become a small blue
9 pie, so it would've gone down regardless of the fraud.

10 I guess I'm still not connecting the dots here, and I
11 will concede to you I haven't studied your brief, and I will
12 study the brief again on this point. But you want me to
13 conclude that the damages are based upon the situation that --
14 well, I guess I'm having trouble knowing for sure how I get to
15 what you had in the second slide that shows that there's a
16 damage that represents three percent of the equity. So repeat
17 that to me again. Do I have that right?

18 MR. JOHNSTON: So yes, the second slide, I put it back
19 up. We're dealing with a hypothetical here, a hypothetical
20 claimant, who lost roughly 1.15 billion dollars from the date
21 that the fraud was disclosed to the date that the shareholder
22 sold -- that the claimant sold its claim.

23 THE COURT: But some of the --

24 MR. JOHNSTON: So it's --

25 THE COURT: -- claimants didn't sell their claims.

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1 That's --

2 MR. JOHNSTON: That's right.

3 THE COURT: Right.

4 MR. JOHNSTON: What the methodology here is trying to
5 do is approximate the amount of alleged fraud in the system,
6 and --

7 THE COURT: Well, but --

8 MR. JOHNSTON: -- then use that as the baseline for
9 sharing.

10 THE COURT: Help me understand it a little more
11 specifically. Let's have two purchasers, and they each bought
12 a hundred million dollars, or you could make a -- I mean, I
13 don't care, a hundred shares, it doesn't matter, and let's get
14 scaled down, if two of them each bought a hundred shares on
15 October 12th, and one of them sold a hundred shares on October
16 13th, that person suffered a market loss of eight dollars per
17 share. The other one suffered a market loss of, you know, five
18 times that, right? So therefore --

19 MR. JOHNSTON: Correct.

20 THE COURT: So therefore, what? Do I value it
21 differently based upon their sale price or based upon the
22 damage that they're alleging on the date they bought it, and
23 therefore -- and other people bought at different times.

24 MR. JOHNSTON: Right. No, you don't value it at all.
25 Those two claimants, those two examples that the shareholder

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1 who didn't sell, to the extent that that shareholder is
2 asserting a claim and the claim gets proven and allowed, simply
3 has a much larger claim, right, as opposed to suffering a five
4 dollar or eight dollar diminution in share price, that claimant
5 went down much farther, so the amount of its claim, the
6 numerator in the formula becomes much bigger, and they get a
7 bigger share of the equity that's being shared with existing
8 shareholders now.

9 THE COURT: Only if they were defrauded.

10 MR. JOHNSTON: Oh, correct, and --

11 THE COURT: Okay.

12 MR. JOHNSTON: -- this is -- that's why I prefaced my
13 statement as saying they have to prove their claim and that
14 claim has to be allowed.

15 THE COURT: But doesn't every claimant then have to
16 prove when he or she bought the shares?

17 MR. JOHNSTON: Yes, they have to prove that in the
18 context of proving up their claim. But my point simply was for
19 purposes of the plan formula, you don't need to do that.

20 THE COURT: What do I need to do?

21 MR. JOHNSTON: Okay --

22 THE COURT: Just let's do it that way because let me
23 tell you, I haven't paid much attention to this, it's not that
24 it's not important, it's terribly important, but what's my job
25 as far as the confirmation? Do I pick your chart versus their

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1 chart? Is that what it comes down to?

2 MR. JOHNSTON: No, because their chart is not in our
3 plan. We are asking you to confirm our plan. If they -- if
4 you determine that the methodology in our plan is incorrect, we
5 would consider your guidance and decide how to amend the plan.

6 THE COURT: So you think, again, this is something
7 that has to be resolved as part of the confirmation process?

8 MR. JOHNSTON: I think that the formula for
9 determining how subordinated equity fraud claims are going to
10 participate in equity under the plan have to be determined
11 because that is a component of the treatment of those claims.

12 THE COURT: Well, it seems to me that the choices are
13 the first date, the petition date, the last day of the class,
14 or whenever date a particular claimant made its purchase
15 decision.

16 MR. JOHNSTON: We --

17 THE COURT: There seems to be about four different
18 choices. I mean, there are three different finite choices, and
19 a fourth category is dependent upon when the claimant made the
20 decision to buy in the first place.

21 MR. JOHNSTON: And we can't have the fourth category
22 because that would require a different sharing formula for each
23 and every securities fraud claimant whose claims, if they are
24 to be allowed, won't all be allowed at the same time, and
25 likely won't be allowed for a number of months, if not years,

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1 because this litigation hasn't even gotten off the ground yet.

2 THE COURT: Okay. I got it. I got your point.

3 MR. JOHNSTON: Let me --

4 THE COURT: But Mr. Johnston, what I think you should
5 do is, obviously, PERA's counsel and I will quickly get a
6 transcript of this colloquy but you should put your two charts
7 on an exhibit that you file. I don't mean a trial exhibit, I
8 mean file something on the docket that attaches them, and then
9 PERA's counsel or I can easily reproduce them and study them.

10 MR. JOHNSTON: Yes, we will do that this afternoon.

11 THE COURT: Okay. Well, all right, so go ahead with
12 your argument.

13 MR. JOHNSTON: Let me confront PERA's argument. So
14 first, PERA argued that, despite what I referred to as an
15 absurd result of the petition date capitalization, that Section
16 502(b) of the Bankruptcy Code requires use of the petition date
17 capitalization as the formula's denominator because the statute
18 provides for claims to be determined as of the petition date.

19 I submit, Your Honor, that that totally misapprehends
20 Section 502. Under Section 502, if they can be proven, the
21 securities fraud claims will be determined and allowed as of
22 the petition date. Nothing in the plan changes that. The
23 issue here is how to treat those claims if and when they're
24 allowed.

25 As Your Honor noted in your recent opinion regarding

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1 the Fire Trust procedures, allowance and treatment are entirely
2 different issues, and PERA simply conflates them.

3 I've got two more points on the formula denominator
4 before I move on to the numerator, which was also subject to an
5 objection. First, it was pointed out in cross-examination of
6 Mr. Wells that an earlier version of the plan we filed on March
7 9 used PG&E's market capitalization on October 16, 2017, rather
8 than the October 12, 2017 date that's in the current version of
9 the plan.

10 As I mentioned, the stock price dropped between
11 October 12 and October 16, and the insinuation, I guess, is
12 that we somehow monkeyed around with the numbers to make the
13 denominator greater than it should be.

14 PERA never said anything about this in its objection,
15 notwithstanding its cross-examination, and despite the
16 insinuation, the simplest answer here is the correct one, which
17 is simply that we made a mistake. We meant to write October
18 12, the date before the alleged disclosures that corrected the
19 fraud, the date that's in PERA's complaint, but in our haste to
20 get that particular version of the plan out the door, it wound
21 up as October 16th. It was a typographical error. We noticed
22 the mistake, and we corrected it a week later in the March 16th
23 version of the plan which is the version that was disseminated
24 to creditors.

25 THE COURT: And what does the class action allege as

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1 the start date?

2 MR. JOHNSTON: October -- oh, the class period is
3 October 12th, 2017.

4 THE COURT: So your date, you're saying you made a
5 four-day error, but the date you uses is the date that the
6 class plaintiffs themselves have used, right?

7 MR. JOHNSTON: Yes, I misspoke. That's not the start
8 of the class period, but as you'll see from our brief, and we
9 have a number of quotes, October 12, 2017 is the date that the
10 class plaintiff says is the date of the first alleged
11 corrective disclosure, the date that the "alleged fraud"
12 started to be revealed.

13 THE COURT: Okay.

14 MR. JOHNSTON: There were also some questions on
15 cross-examination of Mr. Ziman asking why the formula for Class
16 10A-II does not use normalized estimated net income, or NENI,
17 to determine how many shares should go to the securities fraud
18 claimants, and here again, I guess the suggestion is that the
19 securities fraud claimants somehow are disadvantaged or
20 discriminated by this.

21 PERA also didn't say anything about this in its
22 objection, and for good reason. NENI is used in the
23 calculation of new shares to be issued for specific purposes
24 under the plan, for the new equity purchases, and to the fire
25 victim trust. NENI is irrelevant to the question here, which

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1 is what proportion, if any, of the common shareholder ownership
2 as of the petition date should be allocated to fraud claimants
3 like PERA prior to any dilution from those new shares. NENI
4 has nothing to do with it. It's an apples to oranges
5 comparison.

6 Okay, let's move from the denominator to the numerator
7 in the plan formula. As we explained in our brief, the plan
8 provides for insurance proceeds received by fraud claimants to
9 be deducted from their claim amount before calculating their
10 sharing with shareholders.

11 Even though everyone seems to be objecting to
12 everything in this case, Your Honor, I was surprised to see
13 this point draw an objection. It's textbook bankruptcy law
14 that payment from insurance reduces the allowed amount of a
15 claim against the estate. You held as much in your ruling
16 regarding the Fire Trust procedures.

17 Payment to a fraud claimant from insurance is the same
18 as payment from the estate. Without a deduction, the fraud
19 claimant would receive a double recovery, and that's why the
20 only case to have considered the issue in the context of a
21 securities claim subordinated under Section 510(b), the Fifth
22 Circuit's decision in Superior Offshore, that's 591 F.3d 350,
23 approved a plan with an insurance deduction identical to that
24 in this case.

25 Despite what PERA's objection says, this was not an

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1 Ivanhoe collateral source issue. The insurance here is
2 property of the estate, and it's available to the estate to pay
3 claim. You heard Mr. Wells testify to that. Payment from the
4 insurance depletes the estate and it's no different than a
5 direct payment from the estate. Claimant who receives that
6 insurance has the allowed amount of its claim go down on a
7 dollar-for-dollar basis.

8 THE COURT: But is it --

9 MR. JOHNSTON: And this is not --

10 THE COURT: But I -- the reason I distinguished
11 Ivanhoe was because in Ivanhoe you had multiple wrongdoers.
12 Here, we have alleged multiple wrongdoers, don't we?

13 MR. JOHNSTON: Well, we do --

14 THE COURT: And the insurance is substituting the
15 alleged wrongdoing of an officer or director. But in my ruling
16 for the subrogation, there was no wrongdoing by the insurer.
17 The insurer is protecting the beneficiary of the insurance, the
18 homeowner who lost his home. There's no comparable person in
19 this case.

20 MR. JOHNSTON: No, I submit, Your Honor, that this
21 case is even more clear, because the insurance is an asset of
22 the estate, where --

23 THE COURT: Well, it may be an asset of the estate,
24 but it's there to pay the liability of the insured officer or
25 director, in case that officer or director makes a mistake.

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1 MR. JOHNSTON: It's shared coverage, Your Honor. It's
2 also there to pay the liability of the debtors, themselves.

3 THE COURT: Okay, okay. But -- that's right, but the
4 point is there is no third-party contractual relationship
5 between the insurer and the person who suffers the harm. In
6 other words, just like the person who owned his home, who lost
7 his house, is not a wrongdoer and has a contractual right to be
8 paid by his insurer. That's why I set the offset. That, to
9 me, is why I distinguished Ivanhoe.

10 You think that that distinction that I drew said we're
11 not going to count Ivanhoe for the fire thing -- fire victims,
12 applies here. And I guess I don't understand that theory.

13 MR. JOHNSTON: Okay. Perhaps it applies under a
14 different theory.

15 THE COURT: Well

16 MR. JOHNSTON: Which is, as I stated, that what you're
17 getting here is not payment from a guarantor. It's not payment
18 from collateral owned by a third party. It's payment from the
19 estate. It's payment from an asset of the estate. And that is
20 why there is no collateral source. There is no Ivanhoe issue.

21 THE COURT: And does the Sequoia Offshore say that?
22 Does the -- the Superior Offshore --

23 MR. JOHNSTON: Superior.

24 THE COURT: Superior, does the Superior Offshore case
25 come out that same way?

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1 MR. JOHNSTON: No, it wasn't challenged. It simply
2 applied the formula.

3 THE COURT: Okay.

4 MR. JOHNSTON: I think it was clear enough to the
5 litigants in that case that they accepted the insurance
6 deduction without even challenging it.

7 THE COURT: Well, maybe they'll accept it here. I
8 don't know.

9 MR. JOHNSTON: Well, they've objected.

10 THE COURT: Again, I haven't -- I just haven't
11 memorized all the objections.

12 MR. JOHNSTON: Right. That's why I'm raising it, Your
13 Honor, because it is subject to an objection.

14 Okay, unless you have questions about the formula,
15 I'll move away from the way the plan calculates the sharing to
16 address PERA's two other objections

17 THE COURT: Okay, go ahead.

18 MR. JOHNSTON: Okay. First is the argument that
19 there's something wrong with the plan's failure to classify
20 securities fraud claims against the utility, as opposed to PG&E
21 Corporation.

22 Your Honor, the utility didn't issue any common stock.
23 The Class 10A-II claims all arise from the purchase of PG&E
24 Corporation stock. That's HoldCo stock, in the parlance of the
25 plan. It's really impossible to see how there could be any

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1 claim at all against the utility relating to alleged securities
2 fraud involving HoldCo stock. But even if there was, and PERA
3 has asserted one. Even if the claim PERA filed against the
4 utility were valid, PERA concedes that the claim would be
5 subordinated to the level of equity of PG&E Corporation. That
6 concession is right there on page 16 of its -- of PERA's
7 objection.

8 PERA agrees, in other words, that any claim against
9 the utility would receive -- has to receive, the exact same
10 treatment as that provided under the plan. So I submit there
11 can't be a confirmation objection where the plan provides
12 exactly the treatment provided for in the statute.

13 So the only thing that I can think PERA is getting at
14 here is that it's suggesting that it's somehow entitled to
15 separate recovery on two claims: one against the HoldCo, as
16 issuer of the common stock, and one against its affiliate, the
17 utility.

18 Your Honor, the Ninth Circuit law is directly to the
19 contrary. I'll refer you first to a case PERA actually cited
20 in its brief when making its concession, which is In re: Del
21 Biaggio, 834 F.3d 2003.

22 THE COURT: I know it well

23 MR. JOHNSTON: Yeah, so I was going to say, I know
24 you're familiar with it because you applied it in your work a
25 couple years ago.

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1 THE COURT: Well, I applied Judge Carlson's decision,
2 not the circuit decision.

3 MR. JOHNSTON: So the circuit decision held
4 consistently, I think, that claims arising from the purchase of
5 equity of an affiliate of the debtor are subordinated to the
6 level of equity of the affiliate.

7 The circuit held that such claims effectively become
8 claims against the affiliate, not the particular debtor. And
9 in the words of the circuit, in applying Section 510(b), the
10 court must "superimpose the capital structure of the affiliate
11 onto that of the debtor".

12 I think that concept becomes crystal clear when you
13 look at the case that the Ninth Circuit was citing, which is a
14 Lehman Brothers decision out of the Second Circuit, 808 F.3d
15 942. Lehman had facts that are comparable to this case. A
16 claimant alleged fraud relating to securities of Lehman
17 Holdings, which is the parent corporation in the position of
18 HoldCo, here.

19 But a claimant asserted a claim against Lehman
20 International, a subsidiary in the position of the utility
21 here. The Second Circuit held that the claim against the
22 subsidiary should be treated as if it were a claim against the
23 parent, as if the parent's capital structure were superimposed
24 on the utility. And you can find that in the discussion at
25 pages 950 to 951 of that position.

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1 So the same applies to PERA's alleged claim against
2 the subsidiary utility, here. Basically, if there's a claim
3 against the utility, the capital structure of HoldCo, the
4 entity that issued the common stock, must be superimposed onto
5 the utility, which did not issue the common stock. So the
6 fraud claim against the utility becomes a fraud claim against
7 HoldCo and is treated as such. Your Honor, that's exactly what
8 our plan does here. So this objection to the alleged lack of
9 treatment or classification of a claim against the utility
10 fails.

11 Okay, last point. As we noted at the outset, the
12 class did reject the plan and there's been an argument that the
13 plan fails 1129(b) with respect to the treatment of Class 10A-
14 II because it unfairly discriminates. And the complaint is
15 that the securities fraud claims are not entitled to
16 participate in a potential rights offering under the plan.
17 Only existing shareholders are.

18 As we pointed out in our brief, the rights offering,
19 if it occurs, and it very well may not, as Mr. Karotkin
20 described, it will be offered to existing shareholders on
21 account of their status as shareholders. The plan's proponents
22 determined that it would make no sense to offer rights to a
23 group of claimants who not only have no current equity stake in
24 the enterprise, but who also have chosen to sue it for fraud.
25 That's hardly the constituency you want to offer to buy new

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1 equity in a reorganized debtor. And it wasn't unfairly
2 discriminatory not to make that offer.

3 The Ninth Circuit's decision in Acequia is on-point
4 here. That's at 787 F.2d 1352.

5 THE COURT: What's the name, again?

6 MR. JOHNSTON: Acequia. I think that's how you
7 pronounce it.

8 THE COURT: Oh, Acequia. I know that one.

9 MR. JOHNSTON: Okay. It's the first one, not the
10 second one. And in that case, the circuit concluded that there
11 was no unfair discrimination in a plan that treated two
12 shareholders differently, giving one, but not the other, the
13 right to manage the reorganized debtor. The circuit held that
14 management rights were "separate from" rights arising from
15 those associated with share ownership.

16 THE COURT: Well, but that deals with different
17 shareholders. Here, we don't have different shareholders. We
18 have existing shareholders and plaintiffs.

19 MR. JOHNSTON: Agreed, which is a further
20 distinguishing factor

21 THE COURT: Right.

22 MR. JOHNSTON: I think the argument being made is that
23 somehow, because the fraud claimants are subordinated to the
24 level of shareholders, that they have to receive this
25 opportunity or otherwise, it's unfair discrimination.

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1 The Eighth Circuit's decision in Peabody Energy, very
2 recent, it's from last year, at 933 F.3d 918, is another
3 similar decision. In that case, the circuit affirmed a plan
4 that provided rights to purchase stock in the reorganized
5 debtor to some creditors, but not all creditors, similar to the
6 rights offering here.

7 The Eighth Circuit held "a reorganization plan may
8 treat one set of claim holders more favorably than another, so
9 long as the treatment is not for the claim, but for distinct,
10 legitimate rights for contributions from the favored group,
11 separate from the claim".

12 Here, the plan gives participation rights in the
13 rights offering, if it occurs to shareholders on account of
14 their existing ownership stake, their willingness to step up
15 and be owners of the enterprise. A fraud claimant like PERA
16 has no ownership stake. It's trying to block the
17 reorganization, not facilitate it --

18 THE COURT: I don't know if the -- Mr. Johnston, the
19 fire victims don't have a current ownership stake, either. So
20 why do they get rights?

21 MR. JOHNSTON: The -- the fire victims are being
22 delivered stock as consideration -- as treatment for their
23 claims under the plan.

24 THE COURT: No, but --

25 MR. JOHNSTON: They're not getting registration rights

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1 like the -- excuse me, they're not getting a getting a rights
2 offering to buy new stock.

3 THE COURT: Okay, okay. So we can divide the world
4 into three bundles. We have PERA, et al., as nonshareholders
5 who are going to be treated as shareholders, if they have net
6 valid claims. We have the existing shareholders and we have
7 the fire survivors, who are going to become shareholders as
8 part of the plan.

9 So you're saying it's not discriminatory to give
10 rights to the existing equity and the fire victims, but decline
11 them to the fraud claimants? Is that your point?

12 MR. JOHNSTON: No. The plan will give the fraud
13 claimants equity --

14 THE COURT: Yes, I understand

15 MR. JOHNSTON: -- under the formula that we described.
16 What the plan does not do is give the fraud claimants the right
17 to purchase additional equity, separate and apart from the
18 equity being delivered under the plan.

19 MR. KAROTKIN: Your Honor, if I can clarify, the
20 rights would be given -- if there is a rights offering, and
21 that's by no means certain, only to existing holders of record
22 prior to the effective date of -- on a date prior to the
23 effective date of the plan.

24 The Fire Victim Trust will not get stock until the
25 effective date of the plan. Nor, for that matter, would any of

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1 these claimants, assuming they could even prove their claims.
2 So it's quite logical that they shouldn't participate in a
3 rights offering, if it ever happens.

4 THE COURT: Okay. Mr. Johnston, you were getting
5 ready to wrap up, and I'm getting ready to wrap you up only
6 because we're almost to the two-hour mark.

7 MR. JOHNSTON: I have two more sentences. And it goes
8 to the unfair discrimination and I just wanted to remind you,
9 as we talked about earlier, that PERA and the fraud claimants
10 get one hundred cent dollars from any and all available
11 insurance off the top.

12 Shareholders obviously don't get that. So by
13 allocating insurance to the fraud claims, we submit that the
14 plan discriminates in favor of PERA, not against it.

15 THE COURT: But they might be recovering the insurance
16 because they proved that the office of the directors were
17 liable for their mischief. Again, we're back to the
18 complexities of the layers of insurance. But if Director A
19 affirmatively defrauded somebody, he or she should be held
20 liable. But insurance will pay that liability.

21 MR. JOHNSTON: But under the -- an underlying premise
22 of the plans treatment of the claims is that the claimants have
23 established an allowed claim against PG&E.

24 THE COURT: No, I understand that.

25 MR. JOHNSTON: And by definition, that means that they

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1 suffered harm from PG&E and the insurance is PG&E's to satisfy
2 that claim.

3 THE COURT: Well, okay. I gotcha. Okay

4 MR. JOHNSTON: So Your Honor, I submit for all of
5 these reasons that we rehash the plan's treatment of Class 10A-
6 II as appropriate and should be confirmed

7 THE COURT: So to summarize, again, because I've
8 already said I just can't keep up with all the stuff being
9 filed at this point, your argument goes to your portion of the
10 trial brief or your joint brief with the debtors. And that
11 lays out how I should fashion the -- or prove the methodology
12 that's proposed in the plan for treatment of whatever allowed
13 claim, whether it's just one claimant or 2,000 or 5,000
14 claimants. If I make that decision and that holds up, that's
15 how those people, once they know their claim, will get their
16 stock determined, with or without credits for the insurance?
17 In other words, if you are right that you first look to the
18 insurance, then that might be the end of it. But if I disagree
19 with you, it's the former, using the little slice of the pie,
20 not the -- I'm sorry, the big slice of the pie in a bigger pie,
21 than the market value on the petition date that you describe,
22 right?

23 MR. JOHNSTON: Correct.

24 THE COURT: Okay.

25 MR. JOHNSTON: We are asking you to put your stamp of

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1 approval on the formula in the plan for the treatment of these
2 claimants.

3 THE COURT: Yeah. I apologize for asking you a
4 compound question. Okay. Thank you, Mr. Johnston. I
5 appreciate your argument.

6 MR. JOHNSTON: Thank you.

7 THE COURT: Okay. So Mr. Karotkin, do you want to say
8 anything further or are you ready to, in effect, close your
9 opening argument?

10 MR. KAROTKIN: We are ready to close our opening
11 argument.

12 THE COURT: Okay. So let me look at my schedule and
13 make some adjustments here. I said to everyone I would take a
14 forty-five-minute break. I'm going to cheat a little bit. By
15 my watch or my clock here, it's a few minutes before noon our
16 time. I will resume this hearing at 12:45 San Francisco time.
17 So that's about fifty-two minutes from now.

18 And as I said at the outset of the hearing, if people
19 observing the trial or the argument want to just leave your
20 computer on, and you'll probably see our logo with the name of
21 the court. But if you want to log out, you should log back in
22 before 12:45.

23 And at that time, by my calculation, I am scheduled to
24 hear first from Mr. Botter. And then my order that was issued
25 yesterday amended the sequence there. Again, not that anybody

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1 cares, but Mr. Winsberg is on that list, and he independently
2 has asked to be moved later. So he's on for the next day.

3 And so I'm not going to tell you exactly when -- well,
4 let me say this. I intend to stick with the time allocations,
5 but we're a tiny bit ahead of schedule. And maybe some of the
6 lawyers will not need the time they wanted, based on the
7 concessions or stipulations that have been made. So I will
8 give a heads up to Mr. Laffredi, Mr. Troy, Mr. Pascuzzi, Ms.
9 Porter; you are all the first four people for tomorrow. I may
10 call upon you to make your argument this afternoon.

11 Now, I will concede, if you have personal commitments
12 or plans or something where it's impossible, I'm not going to
13 punish you. But what I'd like you to do is between now and
14 12:45, if you are unavailable to be called in that sequence
15 this afternoon, to send an email to my courtroom deputy and so
16 we'll be aware of it.

17 Now, I also will add that I may not get through all
18 four of those people. I'm not going to turn this into a
19 marathon. And the time I allowed for this afternoon, without
20 even getting to tomorrow's schedule is pretty significant. But
21 it may well be that we don't need all that time.

22 So we'll leave it at that. I will look forward to
23 seeing you at 12:45. Thank you for your arguments, Mr.
24 Karotkin, Mr. Johnston. And I'm going to leave my program
25 running, but I'm going to turn my video off.

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1 MR. JOHNSTON: Thank you, Your Honor.

2 THE COURT: Thank you.

3 (Recess)

4 THE CLERK: The court is back in session, Your Honor.

5 We're recording. Would you like me to bring in Mr. Botter?

6 THE COURT: Yes, can you hear me all right?

7 THE CLERK: Yes. Yes, I can.

8 Mr. Botter is joining.

9 THE COURT: All right. Good afternoon, Mr. Botter.
10 Can you hear me all right?

11 MR. BOTTER: I can, Your Honor. Can you hear me, as
12 well?

13 THE COURT: Yes. All right, let me make a couple of
14 announcements. We've had some developments during the noon
15 hour. I've received requests from Mr. Gorton, on behalf of
16 himself, and Mr. Glassman, and Mr. Tredinnick. They have asked
17 to move their argument to Friday, because they want to absorb
18 some of the new filings. I'm going to grant their request, in
19 part, at the moment. I'll move them off of today. Whether we
20 do something on Friday or have to shuffle them tomorrow, I'll
21 have to stay -- hold out on that.

22 I previously indicated that Mr. Winsberg was coming
23 off of our afternoon list and moving him to tomorrow. And
24 also, Mr. Troy indicated that he was unable to move up on the
25 list for today. So I'm going to assume that I will be able to

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1 call upon the following counsel in order, after the agenda for
2 today: Mr. Laffredi, Mr. Pascuzzi, and Ms. Porter. And you
3 can -- we'll come back to you later if there's an issue in
4 that.

5 And I've thought about the discussion I had with Mr.
6 Karotkin during the break, and I think what will work is the
7 following, and I'll stay open to contrary views if this
8 conflicts with someone else. But on the 28th, in document
9 7633, Mr. Karotkin indicated to me that the plan proponents
10 intended to have the Court address now, meaning today, disputes
11 relating to indemnification and contribution claims arising
12 under executory contracts to be assumed.

13 I responded to that in my order of yesterday. I
14 forgot the docket number; not important. And I said that I
15 needed to defer that issue and said that I simply was not able
16 to deal with indemnity and contribution claims. And again, as
17 I said this morning, those are -- as they're linked to
18 executory contracts being assumed, if there are -- and that's
19 what the context is.

20 Now, what I think will work, and I'll throw this
21 out -- I don't need a response from anyone today -- I am
22 reasonably sure that based upon the developments that have
23 happened, that a few things are slightly different. I doubt
24 that Mr. Julian needs sixty minutes on Friday to tell me
25 there's one open item. I'm not going to say he can't have his

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1 time, but I believe that he will not need all that time.

2 And I don't know whether every counsel who wishes to
3 argue today or tomorrow is going to need all the time. But I'm
4 reasonably sure and confident that at least I can deal with the
5 executory contract matters on Friday. And so here is what I'll
6 go, by way of a tentative agenda for Friday. So the published
7 agenda had Mr. Etkin and others from the plaintiff's securities
8 group first with a large chunk of time, Mr. Julian second with
9 another large chunk. Again, if Mr. Julian really needs his
10 hour, I'm not going to deny it to him, but I believe I can
11 anticipate he doesn't need that time.

12 And I'm going to give the debtors thirty minutes to
13 make whatever portion of oral argument they wish to make that
14 was on the topic that they deferred -- that I deferred over
15 their objection. So that is the indemnification and
16 contribution.

17 Then, I will allow an hour for counsel to respond to
18 that. And then, to the extent that the debtors' counsel,
19 whether it's Mr. Karotkin or others -- and again, I'm not
20 excluding Mr. Johnston, if he's going to have any closing
21 argument -- they can have an additional period of time to
22 respond to the indemnity and contribution arguments that
23 counsel will make adverse to them.

24 So that's a little vague, but let me tell you what I
25 have in mind. I'm going to see how we're doing today, and I

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1 probably will issue a docket text later today that will
2 instruct counsel who wish to be heard on the indemnification
3 and contribution issue to send an email saying what they want.

4 Now, I don't want anybody sending emails to anybody
5 yet. We opened up a mailbox for getting the arguers over the
6 weekend, in order -- a mailbox that is only dedicated for other
7 things. And suddenly, people are using it for other purposes.
8 So I want to discuss with my own staff this afternoon how we
9 are going to manage identifying who wishes to be heard on this
10 identification -- excuse me -- indemnification and contribution
11 issue.

12 So to summarize, later today I hope to post something
13 that will invite counsel who wish to be heard and narrow the
14 focus, counsel, not on rejected contracts and not on cures of
15 assumed contracts, but on the narrower issue of the debtors'
16 position on indemnification and contribution.

17 I will then look at the responses that come in and
18 sometime tomorrow, I will make either an announcement or yet
19 another docket text with a little more specificity. And it may
20 well be that I just opened up a period of time for all counsel
21 who have indicated a desire to be heard on that subject.

22 You all have gotten the message from me over and over
23 again that I don't want repetition. You are all generally
24 complying with that and I appreciate it. I'm trying my best to
25 make sure we get all the arguments done by close-of-business

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1 Friday, but I'm also not going to deprive anyone of an
2 opportunity to be heard.

3 So let's leave it at that for now. And even if you
4 don't -- if you disagree with what I said or you're confused,
5 I'll try to take it up later. It may well be that tomorrow
6 morning, after the motion regarding examiner but before the
7 resumption of oral argument, I'll have a discussion with Mr.
8 Karotkin about any clarifications or refinements to the
9 schedule I want.

10 So again, now that, I'm ready to go in a moment with
11 you, Mr. Botter. But I will just simply say that if we make
12 faster track time through the afternoon because of
13 developments, I'm going to continue down the list, but I'm not
14 going to punish anyone who can't be there when you didn't
15 expect to be there. We'll just do our best and try to make
16 this work efficiently.

17 So Mr. Botter, you are -- you have ten minutes to --
18 and you were going to be Mr. Stamer. You have to do a Mr.
19 Stamer look-alike.

20 MR. BOTTER: I don't know that I can do a Mr. Stamer
21 look-alike, Your Honor. But I'll do my best imitation of him,
22 although that may not work as well.

23 Good afternoon, Your Honor. For the record, David
24 Botter of Akin Bump Strauss Hauer & Feld on behalf of the ad
25 hoc committee of unsecured noteholders. First, Your Honor, I

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1 wanted to thank you very much for the opportunity to speak
2 today. And I also wanted to say thank you to Your Honor and to
3 your staff for all of the Court's efforts during the past
4 sixteen months. It has been much appreciated. Thank you, Your
5 Honor.

6 THE COURT: Thank you. I'll thank you on behalf of
7 all of my staff.

8 MR. BOTTER: It has been a pleasure. Thank you,
9 again. Your Honor, I do not plan to use the full ten minutes
10 allotted, but there are a few brief comments I would like to
11 make in support of confirmation of the debtors' amended plan.

12 As Your Honor's aware, the ad hoc committee consists
13 of institutions that hold over twelve billion dollars of the
14 total twenty billion dollars of outstanding utility senior
15 notes claims. The ad hoc committee has been a very active
16 participant since the commencement of these cases and has
17 worked very hard to bring about a successful conclusion to
18 these cases.

19 As we have said numerous times before, many of the
20 members of the ad hoc committee are California-based
21 institutions that have been investors in PG&E for years and
22 have substantial interest in the company's long-term success.
23 As Your Honor is also well-aware, these cases have been
24 extraordinarily hard fought and at times, contentious.

25 Through the painstaking process that has unfolded over

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1 the past sixteen months, however, the pieces are now in place
2 to confirm this plan and ensure that the debtors exit from
3 Chapter 11 and qualify for participation in the go-forward
4 Wildfire Fund. Your Honor, we heard Mr. Ziman's testimony on
5 Monday. The debtors expect to emerge from Chapter 11 within
6 several weeks of the confirmation order being entered. And Mr.
7 Karotkin made that same point at the beginning of this hearing.

8 Your Honor, the ad hoc committee believes that it is
9 critical the debtors obtain all the necessary financing and
10 exit from Chapter 11 as soon as possible, because we all know
11 the risks that arise if the debtors don't emerge before the
12 onset of the next wildfire season.

13 Your Honor, we have heard the debtors loud and clear
14 and we trust that they will keep the parties and interests
15 informed on a timely basis on their progress towards the
16 effective date. With all that being said, Your Honor, the ad
17 hoc committee fully supports confirmation of the amended plan
18 and requests that the Court enter an order confirming the plan.

19 With that, Your Honor, we're done. Thank you very
20 much, again.

21 THE COURT: Thank you, Mr. Botter. I appreciate your
22 comments.

23 All right, we're going to excuse Mr. Botter from the
24 panel and bring in Mr. Feldman.

25 Hello, Mr. Feldman; can you hear me

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1 MR. FELDMAN: I can hear you fine, Your Honor. Are
2 you able to hear me?

3 THE COURT: Fine. You look like you're at your
4 office, rather than your home.

5 MR. FELDMAN: Well, this is my home office, so --

6 THE COURT: Oh, your home office, okay.

7 MR. FELDMAN: Very similar to my office office.

8 Your Honor, I'm going to try not to repeat things that
9 have been said previously, but we also -- for the record,
10 Matthew Feldman on behalf of the ad hoc group of subrogation
11 claimants. We also, Your Honor, want to thank yourself and
12 your staff for the terrific job that you've done, particularly
13 over the last three months, during this very difficult time for
14 our country and for the world. So thank you, again, Your
15 Honor.

16 THE COURT: Thank you. I appreciate your comments and
17 so do my staff.

18 MR. FELDMAN: Your Honor, we also strongly support
19 confirmation of the plan. The debtors and the shareholder
20 proponents have presented a plan that is overwhelmingly
21 supported by the debtors' constituents, satisfies the
22 confirmation requirements of 1129, and allows the debtors to
23 meet the all-important June 30th, 2020 deadline imposed by AB
24 1054. And so we would urge the Court to conclude the hearing
25 as quickly as reasonable and promptly enter a confirmation

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1 order.

2 Your Honor, the plan incorporates the terms of the
3 subrogation claims RSA. We are satisfied that it does so
4 honorably and correctly. The ad hoc group is comprised of
5 approximately 110 institutions that are collectively owed
6 approximately twenty billion dollars of claims. As the Court
7 is aware, they have compromised their claims for an eleven
8 billion dollar claim to be paid in cash under the plan, a
9 substantial discount to the face amount of the claims. They
10 have already paid out billions of dollars in excess of that to
11 the victims and will continue to fund the victims and look
12 forward to this case being over so that the victims can get
13 additional funding.

14 Your Honor, I want to make -- I want to respond to
15 three-and-a-half objections that have been raised that impact
16 the subrogation group. And I'm going to start with the half,
17 because I believe it's been resolved. Your Honor --

18 THE COURT: Isn't a half an objection rounded up to a
19 whole objection?

20 MR. FELDMAN: If the objection still stands, it's a
21 whole objection, but I think it's been resolved. But since
22 we're going in the order we're going, I just want to mention
23 it. As the Court probably is aware and remembers, the plan
24 definition of subrogation wildfire claims became an issue with
25 the TCC. Our understanding is based on the stipulation that

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1 was filed and entered into, that the TCC's objection to the
2 definition of subrogation wildfire claims has, in fact, been
3 withdrawn.

4 It was also mooted by the Court in connection with
5 your memorandum decision over the Adventist group's related
6 objection. So we think that issue is put to bed. If somehow
7 it comes back when Mr. Julian speaks, we'd be happy to address
8 it from our perspective, but I don't want to take up the
9 Court's time anticipating an argument I don't expect to be
10 made.

11 THE COURT: I thought it was resolved too, but that's
12 fine. Mr. Julian will let us know if we're in error

13 MR. FELDMAN: Exactly, Your Honor. The second item I
14 want to address is the classification scheme under the plan.
15 There are two objecting parties to the classification scheme
16 who incorrectly argue that the plan's separate classification
17 of subrogation wildfire claims, fire victim claims, and public
18 entity wildfire claims renders the plan nonconfirmable because
19 it purportedly does not provide the same treatment for each
20 claim as they argue is required under Section 1123(a)(4).

21 This is really a misunderstanding, Your Honor, of the
22 governing law, which is Section 1122 of the Bankruptcy Code,
23 which allows similarly situated claims to be classified
24 together, but does not, under all circumstance, require that
25 they be classified together. And in fact, if there are

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1 legitimate business or economic reasons for separate
2 classification, then that is appropriate under Section 1122.

3 As this Court can take notice, there were multiple
4 legitimate reasons for separate classification, including, as
5 identified by Mr. Wells, the debtors have historically reached
6 separate settlements with subrogation claim holders and the
7 subrogation wildfire claims arise from a unique legal doctrine
8 of subrogation, not as direct claims against the company.

9 And the Court, in fact, has already -- as I think Your
10 Honor alluded to this morning -- has already recognized the
11 classification scheme is appropriate for the fire victims in
12 your ruling related to the objections under Section 1123(a)(4)
13 that were raised by the business claimants' group, the
14 Adventist group, if you will. And so I believe this issue,
15 again, has largely been dealt with by the Court. But we wanted
16 to emphasize that 1122 really should be the governing principal
17 here, Your Honor.

18 THE COURT: Well, again, this is one of these
19 instances where the economy of trying to identify legal issues
20 worked for the people who participated. But those who didn't
21 participate certainly have the right to preserve their
22 argument. And anyone who are on my argument list, if they wish
23 to revisit it, they're welcome to. But I thought that my
24 decision should be dispositive, unless somebody persuades me
25 that I have to change my legal conclusion about it.

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1 MR. FELDMAN: Well, Your Honor, if you're inclined to
2 change your legal conclusion, I'd like another chance to argue
3 with Your Honor as to why you were right the first time.

4 THE COURT: Well, let me use this opportunity to say
5 something to everyone. I haven't thought through exactly how
6 I'm going to articulate my ultimate ruling. I know the debtors
7 have obviously proposed findings and conclusions and a proposed
8 order, but to some extent, all of us who had the brilliant idea
9 to break these things out into things in steps, like inverse
10 condemnation and post-petition interests. And here now, to
11 some extent, some of these classifications, I don't intend to
12 revisit them other than just to cite where they have been dealt
13 with previously.

14 So unless somebody changes my mind on classification,
15 I think the finished product that I produce will just cite in a
16 footnote or a reference to the ruling on such-and-such a date,
17 such-and-such a docket. Just so you know, that was just a --
18 just to give you a heads up, and everyone else, what my plan
19 is, as far as I'm going to go about concluding this matter.

20 Okay, back to the merits.

21 MR. FELDMAN: Thank you, Your Honor. I want to
22 address one more factual issue related to classification. I
23 listened carefully to Mr. Tosdal's cross-examination of Jason
24 Wells the other day, where he cited to the idea that the
25 subrogation claims, in fact, included personal injury and other

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1 nonproperty damage claims. That's, in fact, not correct. And
2 Mr. Tosdal referenced a complaint in the state court where it
3 seems to suggest somehow that those claims are being asserted
4 by subrogation claimants.

5 And just to give the Court a little context on this --
6 and the complaint itself is in the record of the cases, I'm not
7 going to read it verbatim. But I am going to read footnote 1
8 to the complaint. And the complaint, Your Honor, included 283
9 paragraphs of claims. But paragraph 1 of the master --
10 footnote 1 of the master complaint said, and I'm quoting, "Many
11 of the individual plaintiffs are insured with one or more of
12 the subrogation plaintiffs, and therefore, subrogation
13 plaintiffs stand in the shoes of their insurance under the law
14 of subrogation."

15 To make it easier on the Court, subrogation plaintiffs
16 have mirrored the master complaint of the individual plaintiffs
17 where possible. The individual plaintiffs' master complaint,
18 second cause of action, wrongful death, third cause of action,
19 survival actions, seventh cause of action, premises liability,
20 and eleventh cause of action, negligent infliction of emotional
21 distress, have been omitted from this master complaint as not
22 applying to the subrogation plaintiffs.

23 So I think if Mr. Tosdal went back and actually took
24 another look at the complaint and looked at footnote 1, he
25 would see that, in fact, we are carved out of anything but

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1 property causes of action in that complaint, because that is
2 all we have in our class on the causes of action.

3 THE COURT: But isn't it also the law? Your clients
4 are in the business of insuring property, not when someone
5 suffers a personal injury or wrongful death. You don't insure
6 that kind of liability.

7 MR. FELDMAN: It is correct, Your Honor. And just to
8 make the point one step further, in all of the proofs of claim
9 that are filed in this case, which I think the Court is
10 permitted to take judicial notice of, the proofs of claim filed
11 by subrogation claimants are limited to property damage, Your
12 Honor. So I just wanted to make that clarification because I
13 frankly thought it was left open the other day --

14 THE COURT: Okay. It was

15 MR. FELDMAN: -- since Mr. Wells had not been fully
16 prepared for that question. Your Honor, the last issue that --
17 two more issues I want to identify, on the made-whole release,
18 Your Honor, again, Mr. Karotkin covered a lot of this this
19 morning, in terms of the third-party releases under the plan.
20 But what he did not cover was the made-whole release. And I
21 just want to remind the Court that in response to Your Honor's
22 concerns earlier on in the case, where this ended was that
23 [phone ringing] --

24 THE COURT: Turn your phone off

25 MR. FELDMAN: I apologize for that, Your Honor. I

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1 don't know how to turn that phone off. Where this ended was
2 the made-whole release will be granted to the extent a party
3 chooses to settle with the victims trust. But parties, of
4 course, retained their rights to go forward and litigate the
5 amount of their claim, to liquidate their claim in whatever
6 court of competent jurisdiction they choose to bring it in.
7 And in that circumstance, they're not required to sign a made-
8 whole release --

9 THE COURT: That's what I thought, too. And I believe
10 you pointed it out in your response that only one objector has
11 flagged the made-whole. And I don't know whether they're
12 pursuing that any further. But that was my understanding, too.

13 MR. FELDMAN: It is the International Church of
14 Foursquare Gospel.

15 THE COURT: Well, there are a number of claimants that
16 are represented by that counsel. But yes, I understand that.
17 Okay, the last point? Because I'm --

18 MR. FELDMAN: Yes, and the last point, Your Honor, is
19 the exculpation which, again, you sparred with Mr. Karotkin.
20 But I want to address the question you raised about negligence.
21 First of all, this is an ordinary course provision that is
22 contained in a lot of plans, including many that Your Honor has
23 previously approved. And I'm happy to cite to them, but I
24 don't think that's fair to Your Honor, so I'm not going to do
25 it.

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1 But I do want to raise -- I do want to address the
2 point of negligence. I think there's a compelling reason, Your
3 Honor, not to include -- not to carve negligence out of the
4 exculpation, because it invites litigation. And if we had a
5 rule like the British have, where the loser pays, then it might
6 be appropriate to say if you really think you have a negligence
7 claim, bring it on. And if you're wrong, you're wrong. It's
8 going to cost you money.

9 But if you carve negligence out, you're essentially
10 giving people a free option to go try to hold up people. And I
11 think it really runs counter to public policy that you want to
12 encourage lawyers and bankers and committee members to
13 participate in a bankruptcy case in a way that they think
14 provides the best services to their constituents, which I
15 believe is why gross negligence, willful misconduct is
16 appropriately carved out and negligence is not. And we would
17 urge the Court not to change that language and to confirm the
18 plan. Because I think if the Court were to make that change,
19 this would not be the last conversation we have about
20 exculpation.

21 THE COURT: Okay, thank you, Mr. Feldman.

22 MR. FELDMAN: Thank you.

23 THE COURT: All right, appreciate your comments. All
24 right, I'm going to excuse you from our panel and bring in the
25 next counsel. I believe it's Mr. Neumeister.

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1 Mr. Neumeister, I can see your name on the screen and
2 you're -- you just unmuted yourself. Can you hear me

3 MR. NEUMEISTER: I can. Can you see me now?

4 THE COURT: You are fine. All right, good afternoon.
5 You have fifteen minutes, if you wish.

6 MR. NEUMEISTER: Thank you, Your Honor. For the
7 record, Mike Neumeister, Gibson, Dunn & Crutcher, on behalf of
8 the ad hoc committee of holders of trade claims. And I do want
9 to reiterate the thanks others have kind of bestowed on you and
10 your staff for the work you've done in this case and over the
11 last several months. It is very impressive.

12 THE COURT: Thank you, thank you

13 MR. NEUMEISTER: Your Honor, I won't need fifteen
14 minutes. We did see the debtors' revisions to the plan this
15 morning. They sent them over an hour or so before they filed
16 them to us. We have reviewed them, and I think Mr. Karotkin is
17 largely correct, that I think it does resolve most of our
18 concerns. We are still reviewing the revisions with our
19 client. And shortly after receiving those revisions, we did
20 reach out to -- or I did reach out to counsel for the debtors
21 to discuss one or two additional changes that we would like.

22 So Your Honor, I'm happy to discuss those with you
23 now. But I think, frankly, if I had another day or two to work
24 with the debtors' counsel, we could likely resolve all of our
25 issues with minor tweaks of the plan.

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1 THE COURT: Works for me. When you manage a case of
2 this size, you don't want -- you want things to get resolved,
3 not presented.

4 MR. NEUMEISTER: Thank you. So I would just reserve
5 the right to speak tomorrow or Friday, whatever works with your
6 schedule. But I think we'll largely get there.

7 THE COURT: Okay. That's all we need. Okay, thank
8 you for your participation, and we're going to excuse you from
9 the panel now.

10 MR. NEUMEISTER: Thank you.

11 THE COURT: And I'm not going to say that to everybody
12 who leaves. Everybody understands the methodology here, so
13 when you come off the screen it's not because I'm throwing you
14 out of the courtroom.

15 THE CLERK: Your Honor, who would you like me to bring
16 in? Ms. Winthrop?

17 THE COURT: Well, I think -- let's bring in, yeah, Ms.
18 Winthrop and Mr. Mintz, and we'll see how they want to share
19 their time. I didn't know how they wanted to break it down.

20 THE CLERK: Ms. Winthrop is joining now.

21 THE COURT: Ms. Winthrop, I can see your name on the
22 screen. You need to unmute and, if you're participating by
23 video, to activate your video.

24 I see Mr. Mintz. Good afternoon, Mr. Mintz. Can you
25 hear me?

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1 MR. MINTZ: Yes, I can, Your Honor. Good afternoon.
2 Can you hear me?

3 THE COURT: I can. Do you know if -- do you know if
4 Ms. Winthrop's joining us?

5 MR. MINTZ: She is joining. I was going to begin,
6 though. But I don't know if we want to wait until she's able
7 to join.

8 THE COURT: Well, let's wait one second in case she's
9 in the middle of clicking buttons. There she is.

10 MR. MINTZ: There she is

11 THE COURT: You're on camera, Ms. Winthrop. Good
12 afternoon.

13 MS. WINTHROP: Good afternoon, Your Honor. My
14 apologies for the delay. Having a little technical
15 difficulties, here.

16 THE COURT: I have to give you a little story from one
17 of my daughters, who's a photographer. She says people that
18 have the bright light behind them have the witness protection
19 program look. So you've got the witness protection program
20 look now. You've not anymore. How are you and Mr. Mintz
21 dividing up your time?

22 MS. WINTHROP: Mr. Mintz is going to lead the charge
23 and then I will bat cleanup, Your Honor.

24 THE COURT: Mr. Mintz, you and Ms. Winthrop have
25 twenty minutes to share

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1 MR. MINTZ: Well, Your Honor, I'm not going to use it
2 because, similar to the last panelist, I'm going to ask that we
3 defer on certain issues. So let me tell you where we are and
4 if Your Honor is pleased with me pushing off some issues, I
5 think we may make some further progress in working through
6 things.

7 So first of all, Your Honor, with respect to the
8 issues that Mr. Karotkin discussed this morning regarding the
9 drafting issues with respect to the plan and the concerns we
10 raised about a few of the provisions, including I think it was
11 10.3 and 10.9 in the interpretation provision of the plan.

12 We have worked through those languages with the
13 debtor. They sent over language to us. And the version of the
14 plan that was filed this morning reflected those changes,
15 although there was one additional change we requested that was
16 made around the time that that version of the plan got filed.
17 So there is an additional tweak that the debtors have agreed to
18 that will be reflected to resolve those draft and concerns.

19 The second aspect, and what we reserve time for, was
20 in respect of Your Honor's memorandum opinion that addressed
21 the concerns we raised around the trust documents. And again,
22 Your Honor, we thank you for allotting that time in advance of
23 confirmation. We think it was very helpful to the process
24 because by virtue of your ruling, we've been engaged with the
25 TCC and the trustee on trying to implement the changes and deal

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1 with the issues consistent with Your Honor's ruling.

2 We've made progress in that regard and we exchanged
3 drafts with the TCC and the trustee over the last twenty-four,
4 forty-eight hours, and we've been engaged in conversations with
5 them. We think that another twenty-four, forty-eight hours, we
6 should be able to hopefully resolve the drafting issues and
7 incorporate the ruling that Your Honor made. So I would ask to
8 defer on those issues until Friday, with the expectation and
9 hope that we can work through those issues and if there's any
10 remaining unresolved issues, we could then address those on
11 Friday.

12 THE COURT: Well, again, as with my earlier comments,
13 I only -- there's only so much time in Friday. But we'll make
14 it work. And if we have to add more time, we're going to do
15 it. And this is -- I'm glad that -- are you able to report
16 that you're dealing with all the open items that were in my
17 decision? I mean, a couple of them were done deals, but a
18 couple of them were invitations to work something out. So are
19 they all -- all the latter on the table, being worked on?

20 MR. MINTZ: Yeah, everything is on the table and we're
21 working through all of those issues. The report I got back
22 from the counsel for the trustee is that they got back our
23 language last night. They're working through it. They said
24 they had some drafting issues, some language changes they
25 wanted to make, and they had to consult with their own clients.

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1 But it seems like we're heading towards a resolution
2 of those issues. I'm hopeful that we can. And if there's
3 anything that, you know, any lingering issues, those would be
4 the subject of what we like to come back to you with. And
5 we're hopeful that we can resolve this through putting our
6 heads together and drafting our way to a solution.

7 THE COURT: Okay. Well, you may know that in the
8 order that I issued on -- it seems like last month; it was
9 actually yesterday -- I have scheduled a very short segment for
10 Mr. Molton (phonetic), trustee's counsel, on Friday. And that
11 would be a good opportunity, in any event, for -- if the
12 trustee's counsel can say that all these loose ends have been
13 tied together, that's a good status report. And if there's
14 still matters for debate and decision, we'll talk about --
15 we'll either talk about them on the merits or talk about when
16 we have to talk about them. Good. I think --

17 MR. MINTZ: That sounds good, Your Honor.

18 THE COURT: That's all you got?

19 MR. MINTZ: That's all I have, thank you

20 THE COURT: Well, Ms. Winthrop said she's batting
21 cleanup. I'm not sure what she's going to do. But thank you,
22 Mr. Mintz.

23 We'll call on Ms. Winthrop now.

24 MS. WINTHROP: Thirty seconds, Your Honor. I echo Mr.
25 Mintz' comments that we have made some progress, but there's

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1 still work to be done. As with Mr. Feldman, it is my
2 understanding that the TCC has withdrawn its argument with
3 respect to the definition of subro claim. If that turns out to
4 be not -- not to be the case, that would be an additional
5 issue. And of course, Adventist Health is excepted from the
6 made-whole provision.

7 And then finally, one last reservation: an
8 executory -- minor executory contract issue popped up this
9 morning. It's not the time to address those issues. We're
10 working with the debtor. But I expect to reserve on that, as
11 well.

12 THE COURT: Okay, thank you very much.

13 MS. WINTHROP: Thank you, Your Honor.

14 THE COURT: All right. By my box score, we're
15 supposed to hear from Mr. Carlson next.

16 Ms. Parada, is Mr. Carlson -- oh, there he is. Okay.
17 We're running way ahead of schedule. Great.

18 Mr. Carlson, you need to unmute your microphone, and I
19 presume it'll activate the video here in a moment.

20 MR. CARLSON: Your Honor, can you hear me

21 THE COURT: Yes, sir. I can hear you now, Mr.
22 Carlson. Are you using a video or just audio?

23 MR. CARLSON: I am using video. I'm not sure why it's
24 not showing up.

25 THE COURT: Well, go down to the lower left-hand of

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1 your screen and --

2 MR. CARLSON: How's that?

3 THE COURT: There you go. Now you're on video.

4 MR. CARLSON: There we go.

5 THE COURT: Okay. You asked for -- or I gave you two
6 minutes. You're welcome to give me your two minutes, please

7 MR. CARLSON: Well, Your Honor, I appreciate the time,
8 very much. Just to shake your memory loose a little bit, I
9 filed --

10 THE CLERK: Excuse me, Your Honor.

11 Mr. Carlson, please state your appearance for the
12 record.

13 THE COURT: Yeah, just restate your name.

14 MR. CARLSON: This is Eric Carlson, representing both
15 my wife and I.

16 THE COURT: Thank you. Okay, thank you, Mr. Carlson.

17 MR. CARLSON: I filed an objection -- three
18 objections. They were all the same, basically. One was that
19 the disclosure statement hearing, one, was a joinder to the
20 business claimants' objection. And then for this hearing, I
21 filed the same objection roughly again.

22 And my issues, one of them has been resolved, Your
23 Honor. The first one, with respect to the material changes to
24 the trust after confirmation, I believe you resolved that. And
25 so that, I think, has been taken care of. The second objection

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that I have has to do with the trustee's ability to override
without any judicial review. Very similar to the business
claimant's issue.

Unfortunately, I can't get the attention of either the
debtor or the TCC or their attorneys, so I was forced to come
to you today. In your order, your memorandum of opinion,
docket number 7597, you lay out that the order confirming the
plan should include specific language assuring this preserved
right of objectors to seek judicial de novo review after they
have exhausted the remedies under the CRP.

The Court expects counsel for the debtors, the TCC,
trustee, and the objectors to make efforts to agree. I have
attempted -- I believe that I should be included in that
definition of objectors. I don't believe your definition and
your memorandum of opinion includes us. And I'd like to be
included.

THE COURT: I think, Mr. Carlson -- I'm not trying to
minimize the importance of this to you, but I think you have to
understand the way these things play out. Objectors, as
defined, was defined because of a stipulation that came along
from Adventist and Comcast and AT&T and a few other smaller
claimants who are entities. And those group (sic) of people,
they formed a group which were conveniently called "Objectors",
and that's why the mem. dec. and the arguments and the hearing
all was on those people.

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1 You and your wife are objectors with a -- not a
2 capital O, but an objector -- a little O because you objected,
3 and in my mind, are -- you preserved your right. But when I,
4 in my memorandum decision, directed objectors and the trustee
5 and the TCC to work together, I frankly was only focusing on
6 those parties who had participated in that discrete argument.
7 It wasn't an intentional oversight of you. It was just -- you
8 weren't on the radar screen as a party who entered into the
9 stipulation that led to the dispute, and should do -- excuse
10 me, to the discrete issues.

11 So I would simply say that you've heard Ms. Winthrop
12 and Mr. Mintz tell me, just before you spoke, that there's a
13 lot of discussion going on about resolving things that are
14 consistent with my ruling. And I haven't heard from the TCC
15 today, and I won't hear from them today necessarily, and I
16 haven't heard from the trustee, but there's certainly -- my
17 intention is you need to be invited to the discussion, but no
18 one excluded you by -- in any way that I can think of,
19 intentionally. Now, I think and I don't -- I'm not going to --
20 I'm not going to speak for anyone else. If someone said, let's
21 keep Mr. Carlson out, I'd -- that's not -- I wasn't the one.
22 You weren't in the discussion as a defined Objector with a
23 capital O for the people that presented the argument.

24 So why don't we leave it at this. You heard and I
25 heard that maybe by Friday I'm going to hear a resolution of

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1 these issues. I would expect that because my comments are
2 being heard by hundreds of people, the lawyer for the trustee
3 probably would be a good person for you to send an email to and
4 ask to have a dialogue. It may well be that everything that
5 you're concerned about is being dealt with.

6 That's the best I can do for you at this point, but I
7 wanted you to understand that it wasn't an intention to exclude
8 you from the discussion. It was just background that I gave
9 you.

10 MR. CARLSON: I appreciate that, Your Honor. Thank
11 you very much.

12 THE COURT: Okay.

13 MR. CARLSON: I recognize my position in this, and
14 I -- I'm just trying to defend our place and would like to just
15 participate in that and get it resolved, and I believe that we
16 can.

17 THE COURT: Yes, and I certainly respect your
18 position, too. And you are entitled to the same treatment,
19 frankly, that everyone else who filed an objection and
20 persuaded me to rule the way I ruled, so it works.

21 All right, let's leave it at that for now, Mr.
22 Carlson. I will -- let me close the subject by saying you've
23 heard me say I expect to hear from the trustee's counsel on
24 Friday. One of the things that I'll expect him to do is to say
25 that he reached out and had a conversation with Eric Carlson

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1 and either resolved things or didn't, and we'll take it from
2 there. My guess is that it'll get resolved.

3 All right, thank you for your comments and your
4 participation.

5 MR. CARLSON: Thank you, Your Honor.

6 THE COURT: All right, so you can -- Ms. Parada, you
7 can excuse Mr. Carlson. I believe Mr. Barenbaum is up next.

8 MR. BARENBAUM: Good afternoon, Your Honor.

9 THE COURT: Mr. Barenbaum, good afternoon.

10 MR. BARENBAUM: Good afternoon. Daniel Barenbaum on
11 behalf of the Oklahoma Firefighters Pension and Retirement
12 System, OKFPRS. Thank you for permitting me the time to offer
13 a brief argument today.

14 THE COURT: Yes, sir.

15 MR. BARENBAUM: I, too, hope not to use my full ten
16 minutes.

17 OKFPRS is a shareholder. It's also the plaintiff in a
18 derivative action called Oklahoma Firefighters Pension
19 Retirement System v. Chu (phonetic). That case is stayed and
20 pending before the Honorable Edward Davila in the Northern
21 District of California.

22 At the outset, I'm not here to argue about whether a
23 third-party release is appropriate here. There are other
24 objections that tackle that, and I'm going to leave that to
25 them to argue. What I'm here to talk about is fairness and the

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equity of assignment of causes of action against the former
officers and directors.

And I think with regard to the release, it's enough
for me to say that these releases are being offered to officers
and directors for no obvious legitimate purpose, which I will
get to, and that it's not enough for the debtors to simply
claim business judgment without offering support. These are,
by definition, former officers and directors no longer
affiliated with the debtors. They have no common business
interest with the debtors.

Factually, here's what is relevant. In the schedule
of assignment of rights and causes of action, there are a host
of third-party causes of action that are assigned to the fire
victims trust. That's Exhibit E to plan supplement, which is
docket number 7037. There are two pages of possible claims for
vendors and other third parties.

And then on the third page there's one paragraph, and
that's paragraph 2 on page 1936 that says that "any and all
rights, claims, causes of action against any former directors
and officers of the debtors solely to the extent of any
directors' and officers' Side B insurance coverage".

And that's really what I'm here to talk about today.
There is no explanation for that limitation to Side B insurance
coverage. The plan appears to release officers and directors
beyond that. The definition of released parties and releasing

PG&E Corporation and Pacific Gas and Electric Company parties includes officers and directors, and that has been in every draft, including the draft that was sent around this morning.

There's also no explanation about whether Side B insurance was the only insurance available, and whether there's also Side A or Side C; however, the declaration of Jason Wells speaks to that. This is docket number 7510.

Mr. Wells was cross-examined a few days ago, and at footnote 3, he talks about D&O liability insurance policies and says that there is availability up to 400 million dollars and that the primary D&O policies are attached as Exhibit A and B to his declaration. He also says that in addition to those that there's Side A DIC coverage, which is difference-in-conditions coverage.

So we've seen those attached policies now. They appear to include Side A and Side C, now that I've reviewed them, but to the best of my understanding, they're incomplete; one, because they do not add up to nearly 400 million, and two, because there's no Side A DIC policy there. So we know that Side B coverage is here and is available, and it's only that Side B coverage that's the subject of the assignment. It's not clear why the rest is included. Certain --

THE COURT: I need to clarify something. Are you complaining about the fact that there's a limited assignment to the trust or the fact that the company is releasing these

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1 former officers and directors for liability in excess of
2 whatever coverage there is? There are two different issues
3 here, right?

4 MR. BARENBAUM: Yeah, there are two different issues.
5 I just want to --

6 THE COURT: So which one are you complaining about?

7 MR. BARENBAUM: It's primarily the assignment, but the
8 flip side of the coin is the release that comes with it because
9 anything that's not assigned really --

10 THE COURT: Well, I -- yeah, but here's what I'm
11 confused about. If the debtors and the TCC negotiated what was
12 the bundle of rights being assigned, I -- and here's where I'm
13 confused.

14 MR. BARENBAUM: Um-hum.

15 THE COURT: If they negotiated it and that bundle was
16 incomplete, maybe what you're complaining about is there should
17 be more going to the trust. But if you're saying that no, what
18 the debtor shouldn't be doing is releasing its former officers,
19 then why do you care? So why do you care if the debtor
20 releases its officers if your client has a claim against
21 somebody? Nobody's taking your claim and getting rid of your
22 claim.

23 MR. BARENBAUM: Right. So I mean, first of all, I'm
24 not here to argue that, as a claimant, OKFPRS is injured
25 itself, but it's a position that OKFPRS believed in strongly

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1 from the start. It's why it brought its derivative action in
2 the first place. And there is a host of value that is being
3 released without either being assigned -- which I understand is
4 the point that you're raising -- or otherwise being provided in
5 some way to creditors. It's not --

6 THE COURT: But I'm sorry to beat this to death
7 because I want to -- I didn't focus on it. If you're not
8 harmed, if your client isn't harmed, and the company chooses to
9 release its former officers and at the same time is passing off
10 to the trust the insured claims against those officers, it
11 seems to me that just as a matter of principle -- perhaps your
12 client doesn't like it, but there's no harm, no foul --

13 MR. BARENBAUM: Well, first --

14 THE COURT: -- in front of you.

15 MR. BARENBAUM: Sorry, Your Honor. (Indiscernible).

16 THE COURT: No, that -- go ahead.

17 MR. BARENBAUM: It's -- first of all, from -- it's not
18 just that they're providing it up until the insured amount. It
19 appears that other parts of the insurance are not covered, the
20 Side A or the Side C insurance. So it's not simply releasing
21 directors who might have liability out of their own pocket,
22 though that's certainly part of it. But ultimately there's a
23 disclosure statement and then there's a plan, and that's what
24 we review and consider. And from the perspective of my client,
25 it's problematic that the company is holding onto that value

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1 and not providing it to creditors or otherwise explaining why
2 there's some sort of business judgment that would allow it to
3 simply release those --

4 THE COURT: But again, who would they give it to if
5 they wanted to give it to somebody? They made a bargain with
6 the victims.

7 MR. BARENBAUM: Yeah.

8 THE COURT: And the bargain has a price on it, and
9 they didn't -- you and I weren't in the room.

10 MR. BARENBAUM: Right.

11 THE COURT: But if the victims trust could have hung
12 in there for more value, they would have or might have.

13 MR. BARENBAUM: Might have.

14 THE COURT: And if -- there was a bargain, a give-and-
15 ask, and a result, and it sounds to me like what you're really
16 saying is maybe the debtor should have given more to the
17 victims, but that's -- that's interesting but I can't do
18 anything about it. How could I fix the problem for you and
19 your client?

20 MR. BARENBAUM: Well, I mean, I think ultimately, it's
21 up to the debtors to show that it's a fair and equitable plan
22 that they're presenting and to amend it if need be. They've
23 amended it several times; they speak to that as in their
24 omnibus brief, they amended again, I believe, yesterday. And
25 they're talking about amending further, and then ultimately,

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1 it's up to Your Honor following Section 1129 to determine
2 whether the plan is fair and equitable.

3 THE COURT: Okay.

4 MR. BARENBAUM: I'm raising the issue for you.

5 THE COURT: I got it, Mr. Barenbaum. Thank you very
6 much. Is that -- I think that's your point.

7 MR. BARENBAUM: Thank you, Your Honor. That is my
8 point.

9 THE COURT: All right, before you leave, I'll just
10 invite Mr. Karotkin when he's making his closings on Friday to
11 address this if he chooses to. If he doesn't choose to, that's
12 okay, too. I appreciate your comments. Thank you, sir.

13 MR. BARENBAUM: Thank you, Your Honor.

14 THE COURT: Now, by my list, Mr. Gorton asked to be
15 rescheduled. Mr. Glassman did.

16 Mr. Silfen had asked to be a witness -- I mean, an
17 arguer, but I believe his client has settled. So Ms. Parada,
18 did you -- well, Mr. Silfen, if you are expecting to be heard,
19 it's time for you to come forth, but if you're not, you can
20 simply raise your hand and say you don't expect that, and I'll
21 just let that hang out there.

22 And Ms. Parada, is Ms. Pino in the attendees?

23 THE CLERK: Yes, Your Honor. She requests -- I'll
24 bring her in. She requested to trail Mr. Tredinnick and
25 Glassman. I'm bringing her in now.

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1 THE COURT: Okay, and Ms. Parada, if you do get a hand
2 up from Mr. Silfen, which I don't think you will, but if you
3 do, you can let me know.

4 All right, good afternoon, Ms. Pino. I hope this
5 worked for your personal schedule.

6 MS. PINO: Your Honor, being moved up has not worked
7 for my special -- my schedule. I have a CourtCall appearance
8 in the Eastern District at 1:30, and I would request that in
9 light of the changes made to the plan, especially the deletion
10 of 6.1 and the change to 10.6, the injunction, that I'd be
11 allowed to speak after Mr. Gorton and Mr. Tredinnick tomorrow.

12 THE COURT: Yeah, I thought your conflict from the
13 scheduling was for tomorrow, not today. Did I miss -- what?

14 MS. PINO: It is for today. I have a hearing in front
15 of Judge Klein, and my associate is place-holding until I get
16 called on CourtCall.

17 THE COURT: Well, you send Judge Klein my best regards
18 and tell him I'm hanging onto you here for another thirty
19 seconds. I thought I adjusted for it, too, and I was
20 accommodating you. I'm sorry. I will -- I'm still not --
21 we'll let -- if you get the call from CourtCall, I'll let you
22 go immediately, but I don't understand your point.

23 Your point seems to be more your clients are
24 complaining that they're not being -- they're unimpaired but
25 there's no outlet for them to vindicate their rights. I would

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1 think that's the end of the story. If the plan is confirmed
2 and they're unimpaired, they're free to prosecute their claims
3 on their own. What else is there to complain about?

4 MS. PINO: I don't think the plan provides for that,
5 Your Honor. I think what Mr. Gorton refers to in his brief as
6 the word salad, if you connect all the dots in the plan, it
7 does not provide for that. In fact, in their summary to plan
8 objections, docket number 7528-1, at docket page 17, which is
9 page 16 of the actual document, I think the debtor basically
10 concedes my point -- is that the debtors will be in control of
11 how this claim is allowed, and unlike the workers' compensation
12 claimants who are able to proceed as if they case had not been
13 commenced, the tort claimants that are treated as general
14 unsecured claims are held hostage to the claims objection
15 process as posited by the debtor in Section 7.

16 THE COURT: That's not my understanding. My
17 understanding, and I'll state it and then Mr. Karotkin, later,
18 can weigh in on this. My understanding, since your client
19 happens to be the victim of a fire, but not the fires that are
20 in the fire victims class, so it's unfortunate that your client
21 suffered a fire loss, but it could have been any kind of
22 contract -- any kind of thing that their claims are unimpaired
23 and therefore, come confirmation of the plan, they're free to
24 pursue their remedies when and if they choose to. And so
25 that's why, at least when I read your opposition, I was frankly

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1 confused.

2 We'll defer it for now. I'm going to ask Mr. Karotkin
3 to communicate with you directly, offline, if that is the case,
4 and if I have interpreted correctly, he can confirm it to you.
5 If he thinks it's an open issue, I'll let you come back in.
6 And I apologize for misunderstanding your own schedule, so
7 let's leave it at that. Mr. Karotkin's got the homework
8 assignment to figure out if there's a misunderstanding as to
9 where your client is because I think that Mr. Gorton's position
10 and the various entities that he -- it's a much different
11 situation. None of them are representing a tort victim who is
12 not in the class of fire victims. So --

13 MS. PINO: Yes.

14 THE COURT: -- we'll leave it at that for now. Thank
15 you, Ms. Pino.

16 MS. PINO: And thank you for accommodating my
17 schedule, Your Honor.

18 THE COURT: Well, I didn't do very well at it.

19 MS. PINO: Oh --

20 THE COURT: Say hello to Judge Klein, all right.

21 MS. PINO: I will. I will certainly do that. Thank
22 you.

23 THE COURT: All right, Ms. Parada. I believe we have
24 Mr. Harris. Is that correct?

25 THE CLERK: Yes, Your Honor. I will search for him

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1 now.

2 (Pause.)

3 THE COURT: Mr. Harris, you need to unmute yourself.
4 So Mr. Harris, it's nice to see you.

5 MR. HARRIS: Good afternoon, Your Honor.

6 THE COURT: The next time you log in on Zoom, you have
7 to put your first and last name, not your email address.

8 MR. HARRIS: My apologies.

9 THE COURT: So see how my first and last name appears?
10 That's how all the others do it, and that's just for the
11 record. Anyway, go ahead, and you have ten minutes to make
12 your presentation. I've read your opposition.

13 MR. HARRIS: Thank you, Your Honor, Robert Harris at
14 Binder & Malter appearing for Plaintiff Anthony Gantner
15 individually and on behalf of all those similarly situated.

16 Thank you first, Your Honor, for allowing me to bat
17 clean up. I will be brief in the spirit of the afternoon.

18 THE COURT: You're not going to be cleaning up. We
19 have a number of others up and -- coming up to bat, after all,
20 it turns out, with the schedule being changed. Go ahead.

21 MR. HARRIS: In our objection, docket number 7263,
22 which challenged the plan for failure to address with some
23 clarity that referenced damage claims from PSPS events are not
24 to be discharged and that the successor entity will pay them if
25 they're allowed.

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1 We also objected because 10.3 of the plan was overly
2 narrow and would arguably have barred the appeal of Your
3 Honor's order of dismissal, as well as later potential
4 prosecution of an admin claim.

5 We read the plan amendment, and because the language
6 in 10.3 has been broadened and no longer stands as an obstacle
7 to prosecuting the appeal and a potential future claim, should
8 Your Honor be overturned, our challenge to 10.3 has been
9 resolved.

10 Given a moment to make a record, I believe that the
11 first point was resolved as well, Your Honor. In the summary
12 chart of objections to confirmation of the plan, the debtor
13 characterized my client's objection as saying the plan should
14 specifically state that the Public Safety Power Shutoff claims
15 are administrative expense claims that are not subject to
16 discharge.

17 PG&E helpfully offered this response in its chart of
18 objections, "PSPS claims will be treated in accordance with the
19 plan. If they are sustained and determined to be
20 administrative expense claims, they will be treated as such."
21 We assume, therefore, from this response that PG&E agrees that
22 the plan is not inconsistent with the disclosure statement it
23 references, the PSPS claims, and whatever the plan says, it
24 does not preclude allowance of PSPS damage claims as
25 administrative, should they be allowed.

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1 I would ask Mr. Karotkin for some confirmation of this
2 understanding, and if that is given, we have no further
3 objection.

4 THE COURT: Well, okay. And again, I'm not going to
5 ask him to do it on this record because we're taking all the
6 arguments, but he can do it offline, and if that's
7 satisfactory, that's good for me.

8 But let's make sure I'm clear. I dismissed your
9 client's claim, and obviously, he has appealed that. And if
10 that decision is reversed and your client has a claim, it -- to
11 me, there's simply no doubt about it. The whole point of it is
12 that it rose after the petition date. So even though it's kind
13 of an unusual type of claim, it's no different from any other
14 garden-variety tort claim or contract claim. Why is there any
15 question in your mind that your client would, A, not be stayed
16 by any automatic stay at least to prosecute the claim, and
17 there's no question about it beyond that.

18 MR. HARRIS: Well --

19 THE COURT: In other words -- and if your client gets
20 a recovery, is there any doubt that the law and the plan allows
21 or obligates the debtor to pay it?

22 MR. HARRIS: Your Honor, we think in this case it'll
23 be the reorganized debtor. But the plan of --

24 THE COURT: Yes, of course, you're correct.

25 MR. HARRIS: -- the plan says that. And frankly, it

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1 was -- the problem in 10.3 was in terms of references to post-
2 petition claims. There was only a reference to the post-
3 petition fire claims, which was inconsistent with 2.1. We were
4 looking for them to have a parallel change. They've made that.

5 THE COURT: Okay.

6 MR. HARRIS: So we're fine with that, and we
7 appreciate it. Your Honor, I want to take a minute and thank
8 you for all of your efforts and those of your staff in this
9 case. I know it sounds redundant, but it really was an amazing
10 endeavor for such a small staff and court to take on a case
11 like this, so kudos to you all, and here is to hoping there
12 will not be a PG&E III.

13 THE COURT: Well, thanks for the thanks. We're not
14 done yet, and I love the props being piled on. We'll take all
15 the compliments we can get this afternoon if criticisms are
16 withheld.

17 Let me ask you, Mr. Harris, to do the same thing that
18 I asked Ms. Pino to do, and that is if you get an offline
19 communication confirming from Mr. Karotkin or anyone else in
20 his firm confirming what we've talked about, you can simply --
21 you don't have to make another appearance. You can just
22 withdraw your objection or do something. And Mr. Karotkin's
23 been very good about keeping the score sheet up to date on the
24 pending objections, and if yours is withdrawn, that'll be the
25 end of it. So, good enough?

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1 MR. HARRIS: I will do that, and Mr. Karotkin was very
2 responsive when I emailed him before the hearing, so thank you.

3 THE COURT: Well, don't give him any more props. I
4 want the props today.

5 Okay, we're going to excuse you, and I'm not -- we've
6 finished our schedule for all of today, and we're going to go
7 to tomorrow.

8 So I'm going to start on the list. And let's check my
9 list here. By my calculation, I have Mr. Laffredi. Mr. Troy
10 is being passed because he wanted to be heard tomorrow. Mr.
11 Pascuzzi, Ms. Porter, Mr. -- oh, I'm sorry. Mr. Winsberg was
12 moved over to tomorrow. And after Ms. Porter I had Mr.
13 Scarpulla and Mr. Hallisey. So that'll be the plan for now.
14 We'll take another check after we've called those names to see
15 who's up and who wants to be heard.

16 So Ms. Parada, do you have Mr. Laffredi?

17 THE CLERK: Mr. Laffredi is joining now, Your Honor.

18 THE COURT: Okay, Mr. Laffredi, I see your name. I
19 see your face. Now you need to unmute yourself. Good
20 afternoon.

21 MR. LAFFREDI: Good afternoon, Your Honor. Can you
22 hear me?

23 THE COURT: Yes, I can.

24 MR. LAFFREDI: All right.

25 THE COURT: Okay, you have ten minutes, Mr. Laffredi.

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1 MR. LAFFREDI: Great, thank you, Your Honor. I don't
2 think I'm going to use nearly -- much of that at all.

3 We haven't had a whole lot of time, obviously, to
4 review the changes that were made to the plan as of this
5 morning, but based on our review, it appears that our
6 objections to the release provisions have been resolved. So I
7 think at this point, the only thing that's left over that still
8 remains in our objection is with regard to the exculpation
9 provisions, and I really don't have a whole lot to add on top
10 of what was in our brief, but I can highlight the three
11 remaining points.

12 The first is that it appears that the exculpation
13 provision extends to acts that would be beyond the effective
14 date of the plan, and so we want to make sure that the
15 exculpation provision is temporally tied to the bankruptcy
16 case. The second --

17 THE COURT: So effective date, right?

18 MR. LAFFREDI: Right.

19 THE COURT: Effective date or confirmation date?

20 MR. LAFFREDI: Effective date.

21 THE COURT: Okay.

22 MR. LAFFREDI: The second, Your Honor, is with regard
23 to a breach of professional conduct in addition to Your Honor's
24 comments this morning about negligence. We think that the
25 exculpation provision should carve out breach of professional

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1 duties as well.

2 THE COURT: Well, but for whom? In other words, let's
3 start with lawyers. They're easy. But what about someone who
4 is not a lawyer, someone who is on the board, someone who is a
5 member of a committee and makes an innocent error, but
6 nevertheless a negligent error? I've been -- as you know, I'm
7 very rigid on professionals, but I don't know that the law
8 seems to recognize that exculpation is appropriate for people
9 otherwise.

10 MR. LAFFREDI: Well, and I think the law also provides
11 that these exculpation provisions should not include that as
12 well, so we are just wanting to make sure that people who
13 are -- that professional -- breach of professional duties is
14 not somehow immune from anybody who may have a claim.

15 THE COURT: Well, let's test it this way. Let's
16 suppose there are two people who are doing something in
17 connection with the plan. One's a lawyer and he or she is
18 doing law work, and the other is a nonlawyer who is doing work
19 but not one that is governed by rules of professional conduct.
20 If the lawyer makes an error, the lawyer, under a negligence
21 standard, may be liable and may have a malpractice consequence.
22 If the individual makes an error, it's an innocent error but,
23 like any other employee or third-party agent, there isn't
24 necessarily liability.

25 MR. LAFFREDI: Well, if they have a -- if they have a

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1 fiduciary obligation and they breached that, that also should
2 not be included.

3 THE COURT: Well, okay, but then it seems to me that
4 you're saying that if there's an independent obligation, it's
5 some other kind.

6 MR. LAFFREDI: Right.

7 THE COURT: But if somebody's doing a relatively
8 not -- I don't want to sound like I'm minimizing the roles of
9 other people, and I'm not, but somebody's doing something that
10 is not governed by any traditional body of law that
11 professionals, whether they be lawyers or doctors or other
12 kinds of professionals, are not governed by professional
13 standards, it seems to me those are normally included with the
14 exculpation.

15 I'm not asking you to change your mind. I just want
16 to see if you acknowledge at least the distinction there.

17 MR. LAFFREDI: Right.

18 THE COURT: Okay.

19 MR. LAFFREDI: And I'm trying to think of when -- if
20 there was not a fiduciary obligation and not a professional
21 obligation, I'm trying to think of an example of what that
22 would -- where that would come into play in this case.

23 THE COURT: Oh, I can think of a lot, but let's leave
24 it at that.

25 MR. LAFFREDI: All right, okay. I appreciate it, Your

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1 Honor.

2 THE COURT: All right, anything further?

3 MR. LAFFREDI: The last objection is with regard to
4 nonestate fiduciaries. We understand that estate fiduciaries
5 are appropriate to include in an exculpation provision, but the
6 plan includes a whole list of other nonestate fiduciaries that
7 would be included. And part of our concern there is that there
8 may be others out there who may have claims against these
9 nonestate fiduciaries, and if this exculpation provision is
10 allowed, they may be deprived of due process in prosecuting any
11 claims that they may have against those parties. So that's --

12 THE COURT: Say it again, they may be what?

13 MR. LAFFREDI: I'm sorry. They may be deprived of any
14 due process that they may have and any claims that they might
15 want to bring against these non-estate fiduciaries if this
16 exculpation provision is allowed.

17 THE COURT: Okay. Thank you very much.

18 MR. LAFFREDI: That's really it, but I did have one
19 final comment, and my colleague brought this up the other day
20 during cross-examination with regard to the aggregate cost of
21 exit financing, and I understand from Mr. Karotkin that the
22 debtors have this information available, so we would just ask
23 that that information be disclosed. Not getting into the weeds
24 of exactly what fees are going where, but just the aggregate
25 overall amount. And I understand Mr. Karotkin has that

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information.

THE COURT: Okay. Well, he can communicate that separately. All right?

MR. LAFFREDI: Thank you, Your Honor.

THE COURT: Thank you, Mr. Laffredi. I appreciate your comments.

MR. LAFFREDI: Thank you.

THE COURT: All right. Mr. Pascuzzi should be up next.

Mr. Pascuzzi, good afternoon.

MR. PASCUZZI: Thank you, Your Honor. Good afternoon.

THE COURT: You have 20 minutes.

MR. PASCUZZI: Thank you. Paul Pascuzzi for the California State Agencies listed at docket -- in our objection, at docket 7281, Your Honor. We're cocounsel with the California Attorney General's office.

Your Honor, starting with our first objection dealing with the discharge and release provisions, we do appreciate the debtors' revisions that were circulated shortly before the hearing started today. I'm sure they were prompted by the Court's docket entry, so we appreciate that as well.

Our concern, Your Honor, was that the plan could be interpreted to provide the debtors some sort of general release of unknown claims that goes beyond a discharge of claims that

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1 they're entitled to under 1141.

2 Your Honor, my clients come from the perspective of
3 regulating the debtor and will be regulating the post-
4 confirmation debtors, so these are particularly concerning
5 issues to us, and we're still reviewing the changes to the
6 plan, and I will address those with the debtors if there are
7 other issues.

8 One issue that I do know still remains deals with plan
9 Section 10.9(e), and that section is titled Waiver of Statutory
10 Limitations on Releases. It is basically our well known
11 California Civil Code Section 1542 Waiver. It applies to
12 releasing parties and those are not defined term releasing
13 parties under the plan; it's a small R, small P. Given that
14 the plan has now been revised to be clear that there are no
15 involuntary releases and there's only a discharge of the
16 debtors under 1141, that Section 10.9(e) really should be
17 limited to releasing parties as that term is defined under the
18 Plan. Capital R --

19 THE COURT: Wait. Did I -- I lost your sound. Wait.
20 Ms. -- can you hear Mr. Pascuzzi?

21 THE CLERK: No, Your Honor, I cannot. I can hear you.
22 I cannot hear Mr. Pascuzzi.

23 THE COURT: Mr. Pascuzzi. We can't hear you Mr.
24 Pascuzzi.

25 MR. PASCUZZI: Can you hear me now, Your Honor?

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1 THE COURT: Okay. Yeah. Better. Now we can hear
2 you. What happened?

3 MR. PASCUZZI: Okay. I don't know.

4 THE COURT: Okay.

5 MR. PASCUZZI: Sorry.

6 THE COURT: Okay. You said, 10.9(e) should be limited
7 to the capital R releasing parties.

8 MR. PASCUZZI: Right. As it's defined in the plan
9 because those are specific parties who, under the plan, have
10 either signed a ballot giving a release or otherwise specified
11 parties who have agreed to a release.

12 Your Honor, so we'll look at the revisions to 10.3 and
13 figure out if there are any issues, but I do know there's that
14 issue.

15 Your Honor, the other issue we raised and talked about
16 a little bit today was 10.13, the special provisions for
17 governmental units. First of all, I wanted to respond to
18 something that Mr. Karotkin mentioned characterizing what we
19 had in our suggested revision to 10.13 as looking for all
20 government claims to be reinstated, and that's not what 10.13
21 is directed to. 10.13 applies to post-confirmation issues and
22 matters that are not claims and rights against nondebtors, and
23 for the most part, the revisions we were asking for in 10.13
24 were caused by the debtors overbroad release satisfaction
25 settlement and waiver language.

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1 But we did propose something different than what the
2 debtors have in their draft revisions today, so we will look at
3 it. I also note that there were several other government
4 parties that were interested in Section 10.13 of the plan, such
5 as the federal agencies, the Pension Benefit Guarantee
6 Corporation, and Mr. Gorton's clients, Mr. Tredinnick's
7 clients, so I think it would do best for us to group with them
8 and figure out what further changes to Section 10.13 will be
9 needed, and then we can revisit that issue. I don't want to
10 just pepper Your Honor with a bunch of different changes and
11 versions of that section. We should be able to coordinate.

12 THE COURT: Especially since I haven't even seen them
13 yet, right? Yeah, okay. Well, I'm not surprised at your
14 request, so to the extent that you want to reserve further
15 discussion, you should hook up with those four counsel that you
16 identified, or I think you identified all four of them:
17 Glassman, Gordon, and Tredinnick and -- oh, I'm sorry -- three
18 of them. And I don't know that the Pension Benefit Guarantee
19 Corporation has been heard from.

20 And Mr. Troy, of course, is not here this afternoon
21 because he's going to be participating tomorrow so --

22 MR. PASCUZZI: Yes. This --

23 THE COURT: -- you've got to pass to check in with
24 those other people.

25 MR. PASCUZZI: Thank you, Your Honor. And Mr. Troy

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1 joined in our objection, and the PBGC had separately contacted
2 us about that particular section. So I know they have an
3 interest. That's why I mentioned it.

4 Your Honor, the next item I wanted to mention was one
5 of our objections had to do with kind of clarifying how -- any
6 disputes over administrative claims would be resolved. The
7 plan provides that administrative claims are not discharged.
8 There were revisions to that part of Section 10.3 as well that
9 dealt with the fire claims basically being dealt with in
10 nonbankruptcy court. I think that should also be with respect
11 to any other claims that arose post-petition. They should be
12 dealt with in the otherwise appropriate nonbankruptcy form, and
13 that's what we had proposed in our objection, so that had not
14 been addressed by the revisions as well.

15 Your Honor, one other very important part of our
16 objections I wanted to briefly mention, because we do discuss
17 it in our papers very well, is the fact that the fire victim
18 trust agreement and the claims resolution procedures do not
19 recognize the government settlements that this Court has
20 approved, both the State agency settlement and the federal
21 government settlement of the fire claims. You might recall you
22 approved that shortly before the deadline for objections and
23 the voting.

24 The fire victim trust agreement mentions Court-
25 approved settlements only one time and it mentions it in the

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1 context of putting the assets into the fire victim trust
2 agreement for the purpose of paying fire claims and
3 settlements, but there are whole separate provisions in the
4 trust agreement that deal with claims and how they're dealt
5 with, and there's nothing in there recognizing that the trustee
6 and the claims administrator are basically bound by our
7 settlement agreements and have to perform those settlement
8 agreements in accordance with their terms.

9 THE COURT: But you say performance, they just have to
10 pay, right? Is there any performance other than pay?

11 MR. PASCUZZI: There is no performance other than
12 paying, Your Honor. There's also specifically negotiated and
13 carefully crafted releases already in our settlement
14 agreements. So requiring us to sign further releases in order
15 to get paid pursuant to our settlement agreements is
16 inappropriate. So we raised those issues in our pleading. We
17 had contacted the TCC counsel about these issues before we
18 filed our objection and hadn't heard back. The debtors, in
19 their response and in speaking with them, do not have any
20 objections to our proposed revisions that were attached as
21 Exhibit 9 to our objection, so I just want to make sure those
22 are dealt with. We didn't settle our claims and go through
23 some very difficult mediation and documentation to then be put
24 through the claims resolution procedures and redetermine how
25 much our claims are or have to sign new releases that are

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1 already in our settlement agreements. So that's very
2 important, Your Honor.

3 THE COURT: You had any discussion with the trustees'
4 counsel?

5 MR. PASCUZZI: Your Honor, when we were negotiating
6 the settlement agreements, trustees' counsel were on a couple
7 of different phone calls that we had. I know that Mr. Goodman,
8 for the tort committee, was speaking with them because a lot of
9 what we had to put in our settlement agreement, they needed to
10 understand. The settlement agreements actually say they're
11 binding on the trustee and the claims administrator, so they
12 had their chance to negotiate things but I have not heard from
13 them since our objection was filed.

14 THE COURT: This strikes me as more of a drafting or
15 communication glitch. I hope I'm right. I mean, I invite Mr.
16 Julian and Mr. Molton to be prepared to discuss this with you
17 between now and Friday, and then on Friday when they're
18 speaking -- unless it comes tomorrow, but it'll probably be
19 Friday -- to make sure this is flagged. It may be a non-issue.
20 We'll find out.

21 MR. PASCUZZI: I hope so, Your Honor. And I point out
22 that the tort committee, in a couple of their pleadings, docket
23 7509 and 7522, respond to the fire victims who are questioning
24 the amount for the trust by basically saying it's a Court-
25 approved settlement agreement, and it's res judicata and it

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1 can't be changed and it can't be attacked and it's binding on
2 everybody. So I think that argument works here for me as well.

3 Your Honor, another issue that we wanted to raise was
4 the retention of jurisdiction provisions of the plan in Section
5 11.1. The beginning of Section 11.1 basically grants the Court
6 exclusive jurisdiction post-confirmation for all matters
7 arising under or arising out of or related to the Chapter 11
8 cases in the plan, and as we noted, the close nexus test is the
9 test in the 9th Circuit regarding the bankruptcy court's
10 jurisdiction, and I don't think there's any sense of the word
11 exclusive in that context, so there is a provision buried at
12 the end of the plan that says that nothing in this plan expands
13 the Court's exclusive jurisdiction beyond that provided by
14 applicable law but that basically also presumes there is
15 exclusive jurisdiction to begin with.

16 So that provision is just improper and should not be
17 approved.

18 THE COURT: What would be the fix?

19 MR. PASCUZZI: I think the fix, Your Honor, is to say
20 that the plan -- the Court retains jurisdiction to the fullest
21 extent provided by law.

22 THE COURT: That's very clever, isn't it.

23 MR. PASCUZZI: Speaking of Judge Klein, that's what he
24 always says to put in there because then you've got it as much
25 as it's there.

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1 But Your Honor, then I guess, lastly, I wanted to
2 mention that the changes to the plan interpretation provisions
3 that showed up in the draft plan the debtors filed this
4 morning, that was in that clause J that you had issued a docket
5 text question about why should the debtors interpretation of
6 the plan control and supplant judicial review, I think they
7 deleted that so as long as that stays deleted, that deals with
8 our issue there, of course.

9 THE COURT: Well, deletions count and you can't delete
10 something and then put it back in after the hearing, so.

11 MR. PASCUZZI: I would think so. And then, Your
12 Honor, just because the changes to the plan will also require
13 changes to the confirmation order, we reserve the right to
14 review that and comment on that to make sure we have consistent
15 issues.

16 Your Honor, the other thing is Plan Section 8.2(e),
17 this deals with -- it's an executory contract provision, but it
18 deals with the effect of assuming the contract. So I don't
19 know if the Court wants to deal with that issue right now, but
20 it's the provision of the plan that says that the assumption of
21 an executory contract basically is a full release and
22 settlement of any claims and causes of action against the
23 debtors, arising under any assumed contract any time before the
24 assumption, and we objected to that.

25 I mean, if a debtor assumes a contract, and it takes

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1 with all the benefits and the burdens -- and as I understand
2 Section 365, there's a provision for curing defaults -- but if
3 you cure a default, that does not basically release the debtors
4 of any and all claims that arise under the contract. It deals
5 with defaults.

6 THE COURT: What about (indiscernible) claims that
7 existed on that date?

8 MR. PASCUZZI: What about -- I'm sorry?

9 THE COURT: What about claims that were in
10 contemplation that could have been asserted, much like you have
11 when there's a discharge? I mean, isn't this similar to the
12 issue when there's a discharge? It could be a simple
13 individual in Chapter 7. The discharge claims that are in fair
14 contemplation, not things that they've never even materialized.
15 You're not being -- I mean, this operation 8.2.E. doesn't just
16 discharge somebody that doesn't even exist, does it?

17 MR. PASCUZZI: Your Honor, the definition of causes of
18 action, which is included in 8.2 includes unknown claims,
19 unforeseen claims, so it does go beyond the fair contemplation
20 limitation. And my argument is even -- to answer your
21 question -- but in my argument is even more than that. I don't
22 think assuming a contract and curing a default discharges
23 anything with respect to the contract other than it cures
24 defaults. So --

25 THE COURT: Suppose you had a commercial tenant who

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1 had violated an hours of operation clause, but also hadn't paid
2 the rent, and that debtor filed -- that tenant filed bankruptcy
3 and moved to assume the lease, and the landlord says, well,
4 you've got to pay me my back rent. Period. And so the debtor
5 pays the back rent and assumes. Don't you think that resolves
6 any pre-existing claim for a nonmonetary breach?

7 MR. PASCUZZI: Your Honor, if there was a breach, I
8 think -- a lease, Your Honor, is not a good example, with all
9 due respect, because --

10 THE COURT: But it's my example.

11 MR. PASCUZZI: But that -- and okay. Then it is a
12 good example. But I think with nonmonetary defaults under the
13 lease, there's case law out there about that. So incurable,
14 nonmonetary defaults under a lease that can't be cured, you can
15 still assume a lease under that scenario.

16 But let's say there's a contract that says, I'm
17 delivering goods to the debtor over a period of a year, and at
18 the end of the year, we're going to true-up who owes who what.
19 And in the middle of the year, the debtor -- the other party
20 files bankruptcy and there's no default right now, but at the
21 end of the year, when we true-up after the contract's assumed,
22 there might be some more money owed.

23 I don't think the debtor can strip off any and all
24 rights under that contract to true-up something that is not a
25 default under the contract by this provision in 8.2.E. I

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1 think, under 365, the debtor is entitled to cure the default
2 and then the contract goes through all benefits and all
3 burdens. It can't get basically, a 1542 waiver and release
4 just because it assumes the contract.

5 THE COURT: Okay. Let's leave it at that for now.
6 I'll hear from the other side when they have their closing
7 argument.

8 MR. PASCUZZI: Okay. I believe that is all I have,
9 Your Honor.

10 THE COURT: Okay.

11 MR. PASCUZZI: Thank you.

12 THE COURT: Mr. Pascuzzi, thank you very much.

13 I'm going to declare a ten-minute personal convenience
14 break for anyone and everyone. I'm going to turn off my video
15 and we'll be back in a little bit -- in about ten or eleven
16 minutes, and we're ready to go with Ms. Porter, I believe, and
17 then Mr. Winsberg after a ten-minute recess. Thank you.

18 (Whereupon a recess was taken)

19 THE COURT: I'm ready. Thank you.

20 THE CLERK: I'll bring Mr. Karotkin in.

21 THE COURT: Okay. We're back on. Can you hear me,
22 Mr. Karotkin?

23 MR. KAROTKIN: Yes. Yes, sir, I can. Can you hear
24 me?

25 THE COURT: Yeah. Okay. So before we broke -- or as

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1 I was breaking, I made an error. I said we're going to hear
2 from Mr. Winsberg. Mr. Winsberg had asked to go later on in
3 the list after Mr. Bray, and so I will correct that.

4 And Mr. Karotkin, you wanted to get my attention,
5 so -- you got everything solved? You got everything negotiated
6 during the break?

7 MR. KAROTKIN: I just wanted to make some
8 clarification with respect to Mr. Pascuzzi, but he and I
9 exchange emails. He hurt my feelings by not advising the
10 people that many of his objections have been resolved. So I
11 wanted to clarify that. But he mentioned to me that he had
12 advised the Court so no need to address it.

13 THE COURT: Okay. But while you're here, I'm going to
14 edit something I said before because we are moving much more
15 quickly than I anticipated when I did the schedule. And so
16 even when I broke after the lunch break, I said I was going to
17 sort of figure out and ask people to communicate with my staff
18 about who wants to speak when.

19 I wonder whether you agree with me, Mr. Karotkin --
20 and you need to unmute yourself -- can I burden you to sort of
21 coordinate who wants to be heard and when because you are first
22 line of defense here with things getting resolved, and we don't
23 need to have lawyers contacting my staff and staff contacting
24 me and my schedule -- adjusting the schedule if there are
25 things all resolved.

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1 So here's my proposal. You can turn me down; I won't
2 take it personally, is that when we break today, and I'll make
3 an announcement about that in a little while, I will invite
4 people who have moved their speaking because they want to
5 review the drafts, or people, for the various reasons we talked
6 about, to communicate it with you. Presumably, they will email
7 you (indiscernible), and then tomorrow after the motion
8 regarding the examiner, you can tell me what you've got
9 resolved. In other words, I don't mean you can tell me -- of
10 course you can tell me what you've resolved on the merits, but
11 what you are proposing as far as a schedule, because here I
12 deferred a bunch of people, assuming we were going to go all
13 the way to mid-day Friday, and it's clear we're not going to
14 have to go to mid-day Friday. I want to use as much of today
15 as I can, and then there will be some speakers left tomorrow.
16 But if I hear from you in the morning about what you have
17 discussed with time allocations, I can ask if anybody has any
18 problem with that, and we can then zero in on what would be the
19 agenda for the rest of tomorrow and also for Friday.

20 That work for you?

21 MR. KAROTKIN: It works for me, Your Honor, if the
22 burden is upon them to contact us because it would be too
23 difficult for us to be reaching out individually to everybody.

24 THE COURT: Right. And I'll make that clear in a
25 moment, or I'll make it clear right now. So whether a certain

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1 lawyer who thought maybe it's resolved but weren't sure, or
2 certain others -- like I'll use Mr. Gorton as the leader, but
3 he's the spokesperson for several lawyers representing
4 similarly situated clients, and in many respects, Mr. Pascuzzi
5 is similar and Mr. Troy, all of them, they may or may not need
6 to be heard further, and because I promised to make sure we
7 come back to deal with this issue of indemnification and
8 contribution claims, that's got to be dealt with also.

9 So I guess what I'm saying is I will not be inviting
10 lawyers who want to be heard and argue on any of these subjects
11 to contact my staff, but rather to contact you, Mr. Karotkin.
12 Or if you want to delegate it to someone under your direction,
13 feel free to do so if you have a victim in mind, and then
14 you'll use your judgment -- and it's only a judgment. I'm not
15 going to put an incredible burden on you, nor am I going to
16 take away the right of anybody who doesn't agree with you, to
17 try me. But you're the scheduler, if you will, for the
18 arguments that are either being moved off of the current list
19 or need to come on the list because they were taken off the
20 list by me because they relate to a contribution or
21 indemnification. And you tell me tomorrow. If you put
22 something on the docket, I'll be able to look at it. But one
23 way or the other, we'll have a discussion and by mid-morning
24 tomorrow. I ought to be able to at least go through a time
25 line for who else is going to present their argument during the

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1 balance of tomorrow and who should be anticipating doing that
2 on Friday.

3 Okay? Is that all right?

4 MR. KAROTKIN: Yes, sir.

5 THE COURT: Okay. Okay. I'm going to move you out of
6 the panel again and ask Ms. Parada to bring Ms. Porter in.

7 Good afternoon, Ms. Porter.

8 MS. PORTER: Good afternoon, Your Honor.

9 THE COURT: It's good to see you again.

10 MS. PORTER: Thank you. You too.

11 THE COURT: You have ten minutes.

12 MS. PORTER: Thank you, Your Honor.

13 THE CLERK: Ten minutes?

14 THE COURT: Yes.

15 MS. PORTER: Cara Porter for the California Franchise
16 Tax Board. Your Honor, FTB raised three main objections to
17 confirmation. The first of which was regarding interest on
18 allowed priority tax claims. Your Honor, debtors have proposed
19 an amendment to the plan, Section 2.4, which would cure our
20 objection. The additional language that they proposed to add
21 as to payment of allowed priority tax claims that are paid in
22 the ordinary course of business. The additional language would
23 be together with any interest due at the applicable
24 nonbankruptcy rate resolved FTB's objection to that particular
25 issue.

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1 THE COURT: Right. Thank you.

2 MS. PORTER: The second issue we raised was with
3 regard to the discharge, and Mr. Pascuzzi has already addressed
4 Section 10.13. That is a section in which FTB does have an
5 interest, and I have spoken with Mr. Pascuzzi offline with
6 regard to that. As a governmental unit, FTB we'd like to
7 participate in the discussions and further resolution of the
8 issues regarding 10.13 to the extent that FTB needs to weigh
9 in.

10 For Your Honor, any further, I'd like to come back on
11 Friday. However, I'm hopeful that I won't need to do that.

12 THE COURT: You need to make sure Mr. Karotkin
13 understands you still want to be heard, and we'll take that up
14 tomorrow and schedule it, as necessary.

15 MS. PORTER: Yes, Your Honor. Very good.

16 THE COURT: And the third one?

17 MS. PORTER: The third issue is with regard to the
18 plan's use of the term "restitution". As we've explained in
19 our objection, which is in document 7280, Your Honor, certain
20 payments that are characterized as restitution may be
21 deductible as tax deductions, and FTB is concerned that the use
22 of such current restitution in the plan here would be
23 determinative.

24 And debtors admit, Your Honor, that the term
25 "restitution" is a prerequisite as the identification of

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1 payments as restitution is a prerequisite for tax
2 deductibility, but it is not determinative, and debtors
3 agreement to that idea, that concept, is in the chart
4 accompanying their response to the objections to claim, docket
5 number 7528-1 at page 6 of 21. So Your Honor, FTB requests the
6 clarification in the plan confirmation order that any
7 reference --

8 THE COURT: Lost your sound. Ms. Parada, did you hear
9 her?

10 THE CLERK: No, Your Honor. I don't hear Ms. Porter.

11 THE COURT: Okay. So I don't know --

12 MS. PORTER: I'm sorry.

13 THE COURT: -- there's lawyers --

14 MS. PORTER: Am I back?

15 THE COURT: I'm worried about the lawyers representing
16 the State of California. They keep going --

17 MS. PORTER: My apologies, Your Honor.

18 I was saying that FTB requests a clarification in the
19 order for confirming plan that any references to payments as
20 quote/unquote restitution are not determinative for
21 deductibility purposes. And because debtors admit such term is
22 not determinative, there should be no problem with the order
23 confirming plan stating as such, or indicating their agreement
24 to that concept.

25 THE COURT: Okay. We'll put that on Mr. Karotkin's

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1 to-do list, to indicate whether he agrees with you or if not,
2 it's an issue that I guess I'll have to decide if there's no
3 agreement.

4 MS. PORTER: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. PORTER: Thank you, Your Honor.

7 THE COURT: Thank you, Ms. Porter. I appreciate your
8 time.

9 MS. PORTER: Thank you.

10 THE COURT: All right. Ms. Parada, I think I want to
11 bring Mr. Scarpulla and Mr. Hallisey in together and then they
12 can tell me how they want to divide their time.

13 Okay. Mr. Scarpulla, I see your name on the screen.
14 It looks like you need to unmute your microphone.

15 And same to you, Mr. Hallisey. You need to unmute
16 your microphone.

17 Okay. Mr. Scarpulla, you've done it, but you haven't
18 turned your video on. There we go.

19 Mr. Hallisey, how --

20 All right. Good afternoon to both of you.

21 MR. HALLISEY: Good afternoon, Your Honor. I hope you
22 note my name. My full name is at the bottom.

23 THE COURT: I gotcha there.

24 I don't see Mr. Scarpulla on the screen, though. Mr.
25 Scarpulla, what's your camera pointing at?

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1 MR. SCARPULLA: Your Honor, I don't know why it's not
2 showing up because it shows that I have video and I have
3 unmuted it.

4 THE COURT: Well, move your laptop top up and down and
5 see if we see something else in the room. There you go.

6 MR. SCARPULLA: There you go. There you go.

7 THE COURT: All right. Now, how have you two
8 gentleman divided your time?

9 MR. SCARPULLA: Mr. Hallisey is going to address Your
10 Honor right now. But we haven't had a chance to even -- we're
11 working on our closing statement, even as we speak, so we'd
12 like to stick with tomorrow, but --

13 THE COURT: But this is --

14 MR. HALLISEY: And we'll work the time out. We won't
15 need more than twenty minutes so --

16 THE COURT: Well, I can't promise you tomorrow. I did
17 originally, but let's go with now, Mr. Hallisey. Let's see
18 what you can do in your --

19 MR. HALLISEY: Could I ask a question first? There's
20 apparently an arbitration. At the beginning of the hearing you
21 indicated it was a binding arbitration on a couple of the
22 issues that we have been complaining about for seven months or
23 so. And is that arbitration binding or not? The order is a
24 little bit unclear. It talks about arbitration, I think, in
25 two or three occasions, but it doesn't say whether it is or is

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1 not.

2 THE COURT: Well, the way --

3 MR. HALLISEY: And it simply an --

4 THE COURT: The way Mr. Karotkin explained it to me is
5 that the TCC and the debtors resolved several of their
6 differences. One of them --

7 MR. HALLISEY: Right.

8 THE COURT: One of them has to do with calculating the
9 amount that is plugged into this formula which is called
10 normalized net income, or whatever the acronym is, that is a
11 multiple of a number of factors. And that is going to be
12 arbitrated, and apparently next week, with Mr. Meyer of JAMS,
13 and the TCC and the debtors have agreed to be bound by his
14 determination of that formula. That's the only thing that they
15 explained to me is being arbitrated. There may be other things
16 that are being arbitrated, but that's the only thing that is
17 the subject of, I'm told.

18 MR. HALLISEY: Well, isn't the registration rights
19 being arbitrated also?

20 THE COURT: Well, I'm told that the registration
21 rights are continuing to be negotiated through the mediation
22 process. So again, I'll repeat that the TCC and debtors have
23 agreed to a binding arbitration of what will allow a
24 determination of the dollar amount to fix for the share value.

25 I'll tell you what, Mr. Hallisey, I invite you to

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1 discuss that more specifically with Mr. Karotkin or perhaps
2 with Mr. Julian. I don't feel comfortable enough to understand
3 it to try to explain it.

4 MR. HALLISEY: I understand.

5 THE COURT: No, but the point is that until last
6 night, I guess, the TCC had several significant objections.
7 They've resolved all but one of them. And the one that is
8 unresolved at the moment is the rights agreement. But what's
9 resolved and -- about to be resolved through the arbitration
10 process is the plug-in for this number to calculate what is the
11 share price.

12 Again, I don't want to -- don't quote me; I might be
13 using the wrong term, but it's to resolve and bind both sides
14 as to what the figure is. So you take that up with them
15 offline, and I'm sure they can explain it to you much more
16 clearly than I can.

17 MR. HALLISEY: All right, thanks.

18 THE COURT: So for now, you need to tell me why -- I
19 assume you're still appearing in opposition to confirmation of
20 the plan. That's what I want you to address, or if you believe
21 that the plan should be confirmed with changes then tell me
22 that. Those are the three choices I gave you. If there's a
23 fourth choice called "none of the above", give me the "none of
24 the above".

25 MR. HALLISEY: Well, we're prepared to do that

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1 tomorrow, Your Honor, and request that we go over until
2 tomorrow.

3 THE COURT: Well, okay, but I'm going to put you both
4 all the way over to tomorrow because, as I say, I moved this
5 up -- I'll do it; I'll take you both off, and we'll leave you
6 on for tomorrow. I don't know when. It'll prob --

7 MR. HALLISEY: That's all right, Your Honor.

8 THE COURT: It'll probably be --

9 MR. HALLISEY: Whatever's convenient with you.

10 THE COURT: Well, I hope you heard me have the
11 discussion with Mr. Karotkin. There are some very fluid issues
12 that relate to, particularly, governmental agencies who are
13 digesting the amendments that were filed just within hours, and
14 a group of them are trying to work things out. And what Mr.
15 Karotkin is going to do is he's going to collect estimates and
16 who wants to be heard when. And I will assume -- I have
17 reserved for his -- his, Mr. Karotkin's penciling in a
18 schedule, that you two gentlemen will have twenty minutes
19 sometime tomorrow.

20 MR. HALLISEY: Right, and we're flexible as to when it
21 is.

22 THE COURT: Okay. We'll leave it at that. Thank you
23 both. We'll excuse you for now.

24 MR. SCARPULLA: Thank you, Your Honor.

25 THE COURT: And Mr. Marshack is next up.

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1 THE CLERK: Your Honor, Mr. Karotkin would like to be
2 heard. Would you like me to bring him in?

3 THE COURT: Let's keep him in here for a while.

4 THE CLERK: Mr. Marshack is joining now.

5 THE COURT: Mr. Marshack, can you unmute yourself and
6 turn on your video?

7 And Ms. Parada, are you bringing Mr. Karotkin back?

8 THE CLERK: I will do so now. One moment, Your Honor.

9 THE COURT: Okay. Mr. Karotkin, can you hear me?

10 MR. KAROTKIN: Yes, sir.

11 THE COURT: Okay. You asked to come back in.

12 MR. KAROTKIN: Yes, I'm sorry. I didn't want to
13 interrupt but on the issue of --

14 THE COURT: Wait, I can't hear you now.

15 MR. KAROTKIN: Hello?

16 THE COURT: Go ahead.

17 MR. KAROTKIN: Can you hear me now?

18 THE COURT: Yes, sir.

19 MR. KAROTKIN: Okay. On the issue of the arbitration
20 which you were just talking about, just to be clear, there was
21 a stipulation filed with Your Honor yesterday, which you
22 approved, which has the precise wording of what is going to be
23 arbitrated. And if people will look at that, there will be no
24 mistake about what is being arbitrated with respect to that
25 matter.

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1 THE COURT: Okay. That's fine. I remember that.
2 Again, I can't keep track of all of these documents. Can you
3 remind me of the docket number of the order?

4 MR. KAROTKIN: I will shortly. I don't have it in
5 front of me, but it was --

6 THE COURT: Oh, I might --

7 MR. KAROTKIN: -- entered yesterday --

8 THE COURT: I might have it here.

9 MR. KAROTKIN: It was entered yesterday afternoon.
10 Well --

11 THE COURT: No, I know that.

12 MR. KAROTKIN: Okay.

13 THE COURT: I just -- well, I tell you what, Mr.
14 Karotkin, why don't you just send an email to the two counsel
15 that were just on and just say that the issue being arbitrated
16 can be found in document number such-and-such, and --

17 MR. KAROTKIN: Will do.

18 THE COURT: -- they can read it from there. And I
19 presume you can respond to a question or two if they want some
20 clarification.

21 Now, do you want to stay on the screen for a while, or
22 shall I let you out again?

23 Mr. Marshack's on your side, so maybe you don't need
24 to listen to him. What's your pleasure?

25 MR. KAROTKIN: Whatever your pleasure, Your Honor.

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1 I'm happy to --

2 THE COURT: No, it's your pleasure. You can go off if
3 you want. I'm not going to interrupt you. I'm not going to
4 call on you. Okay.

5 MR. MARSHACK: He may want to respond to something I
6 have to say.

7 MR. KAROTKIN: Then I'll go off.

8 MR. MARSHACK: Your Honor, I want to note that Mr.
9 Karotkin got quite the haircut, and let's just hope that
10 Governor Cuomo is not in the audience today.

11 THE COURT: Well, the governor's brother got a haircut
12 the other day that looked like he was attacked by savages. But
13 Mr. Marshack --

14 MR. KAROTKIN: I was concerned that my hair was
15 interfering with the internet connections in the United States.

16 THE COURT: I'll show you my hair.

17 Mr. Marshack, you are substituting in place of Mr.
18 Singleton, and you have ten minutes. What can I do for you?

19 MR. MARSHACK: I do, Your Honor, but we prefer to go
20 tomorrow. We're not quite ready yet. We are going to wait for
21 all of these presentations.

22 I will give a preview, and the preview is this. So
23 many things have been resolved that we don't have any
24 objections, and we just want to let the Court know, one, you
25 guys have done a terrific job. You've done a terrific job of

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1 pivoting. The debtor has done a terrific job of managing these
2 issues, and we fully support confirmation.

3 Having said that, I think Mr. Singleton and I were
4 looking at regrouping tonight because we were on tomorrow's
5 agenda. So how would you like to handle this? I don't know
6 that we're going to be adding anything tomorrow, but I don't
7 know what Mr. Singleton has on his mind.

8 THE COURT: How can I say this politely? I don't want
9 to hear from people that don't help me with my decision-making.
10 If you are going to come on and tell me nice things about me or
11 my staff or my haircut, I'm still going to decline the
12 invitation at this point because I'm trying to get through this
13 day.

14 So let's do this. You and a number of other people
15 are on Wednesday afternoon because you originally scheduled for
16 late Thursday morning, and we just moved this thing up. But if
17 I end up with so many people that I can't make it work, I can't
18 make it work. So I'm going to just take you at your offer to
19 roll it over to tomorrow, and I might hold you to a much
20 shorter period of time. It really depends on what other people
21 want to do. So --

22 MR. MARSHACK: Your Honor, you have my commitment that
23 it will be -- if I appear -- if I appear, it will be under two
24 minutes.

25 THE COURT: Okay. Thank you, Mr. Marshack.

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1 MR. MARSHACK: Thank you.

2 THE COURT: I appreciate your comments.

3 All right. For my notes -- here, let me read the
4 following. According to my notes -- Ms. Parada, you can excuse
5 Mr. Marshack -- I'm going to call the following in order: Mr.
6 Tosdal, Mr. Finestone (phonetic), and then I'm going to ask Mr.
7 Bray if he wants to reserve and argue tomorrow. And I will
8 then decide what to do after that.

9 So Mr. Tosdal, and then Mr. Finestone coming up next,
10 please.

11 Good afternoon, Mr. Tosdal.

12 MR. TOSDAL: Good afternoon, Your Honor.

13 THE COURT: I can hear you. All right.

14 MR. TOSDAL: There you are.

15 THE COURT: You have fifteen minutes. Good afternoon.
16 Nice to see you.

17 MR. TOSDAL: Thank you, Your Honor, you've got a full
18 day.

19 THE COURT: That's what I get the big bucks for.

20 MR. TOSDAL: Yeah, I guess.

21 THE COURT: You need to tell me what you want me to
22 do, and --

23 MR. TOSDAL: I will, indeed. Tom Tosdal for Patricia
24 Garrison.

25 Ms. Garrison has two objections, Your Honor. The

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1 first is to classification, and with regard to that objection,
2 she requests that you deny confirmation of the plan. The gist
3 of the objection is that the three separate classes denoted
4 with the number 5, the public entity wildfire claims,
5 subrogation and wildfire claims, and the fire victim claims
6 should, under the law, have been put into one class with equal
7 treatment with regard to the proportion of stock and cash
8 concerning the respective funds.

9 And so really the goal here is to shift stock to the
10 other two groups and shift cash, not entirely but
11 proportionately, to the fire victim claimants.

12 THE COURT: Do you think she would do better that way?

13 MR. TOSDAL: Pardon?

14 THE COURT: Do you think she would do better if we put
15 all three in one class and --

16 MR. TOSDAL: Well --

17 THE COURT: Remember --

18 MR. TOSDAL: It's my understanding that there can be
19 subclasses with different funding amounts for each subclass.

20 THE COURT: But what's the difference between three
21 classes and three subclasses? It's --

22 MR. TOSDAL: Well, because the treatment is, as I
23 understand it, supposed to be equal amongst the subclasses in
24 terms of proportionality.

25 THE COURT: But I don't think the statute even thinks

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1 about subclasses. Subclasses is a lawyer invention, and the
2 statute says you can classify claims. But more importantly,
3 what would I do, if you were right, with the subrogation people
4 who have, they say, voluntarily reduced their claim by forty-
5 five percent or nine billion dollars?

6 MR. TOSDAL: Well, that's what they say, Your Honor,
7 but let's take a look at the fire victims claims. As of today,
8 there has been no estimation of the amount of the fire victims
9 claims.

10 THE COURT: Well, we're just waiting for Judge Donato
11 to do it, though, aren't we?

12 MR. TOSDAL: Well, but Your Honor doesn't know what
13 he's going to do. I sure don't know what he's going to do, and
14 he doesn't done it yet.

15 THE COURT: But I asked Mr. Karotkin earlier today --
16 I don't know if you were on the line -- can I confirm this plan
17 without a decision from Judge Donato, and Mr. Karotkin thought
18 I could. I personally don't imagine he's going to wait, but I
19 don't have any discussions with him so I don't know what his
20 agenda is. But my point is he will issue an order that will
21 peg a number, some number --

22 MR. TOSDAL: Yes.

23 THE COURT: Then he can -- obviously the debtor and
24 others have urged him to make it thirteen-and-a-half billion.

25 MR. TOSDAL: I understand that, Your Honor, but he

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1 hasn't done that yet, and he's asked for evidence of the fire
2 victim damages.

3 THE COURT: Okay.

4 MR. TOSDAL: And he hasn't gotten it yet. And so I
5 don't know what Judge Donato's going to do, and I don't know
6 that anybody on this screen knows what Judge Donato's going to
7 do.

8 THE COURT: Okay. But your argument is that there
9 should be three pots, all called one class, but with three
10 subclasses.

11 MR. TOSDAL: Yes.

12 THE COURT: Okay.

13 MR. TOSDAL: And that there should be proportionality
14 with regard to the stock and cash in each -- as to each group
15 because I think the evidence is very strong that the claims are
16 substantially similar. They all arise from the same fires;
17 they all claim property damage. According to Mr. Wells'
18 testimony, the liability claims are essentially the same.
19 They're all disputed claims. And so what --

20 THE COURT: Well, they're not all -- excuse me,
21 they're not all disputed claims. They're not all disputed at
22 all; a lot of them have been settled.

23 MR. TOSDAL: Okay. But what's remaining, which is the
24 bulk of it, are disputed.

25 THE COURT: Okay.

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1 MR. TOSDAL: They started out disputed. There's been
2 a settlement, and I'll get to that. But they started out
3 disputed. Okay. I see what you're saying.

4 THE COURT: Some of them didn't even start out
5 disputed; some of them were liquidated because they were
6 settlements from the Butte fire, but that's a small percentage.

7 MR. TOSDAL: Very small, comparatively.

8 THE COURT: But they're still in the same class. In
9 other words, a victim who suffered in the Butte fire who never
10 got paid, but has a stipulated judgment for 100,000 dollars, is
11 still waiting to get paid. A victim from a camp fire, who
12 suffered similar damages, is sitting there with an
13 unliquidated, presumably still disputed claim. So there's no
14 way, at the moment, they're going to be -- there's a way to
15 treat them the same. Ultimately, hopefully they will be
16 treated the same. Anyway, go ahead.

17 MR. TOSDAL: All right. Okay. So what counsel said
18 this morning is that the subrogation claims are a different
19 legal basis. And respectfully to him, that is just entirely
20 legally incorrect because the subrogation insurers stand in the
21 shoes of their insured fire victims and assert the same type of
22 claims -- not the same type -- assert the same claims against
23 the tortfeasor, PG&E, recoverable up to the level of their
24 payments. So that argument doesn't make sense.

25 The other comment by counsel this morning was that

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1 there was no personal injury claims in subrogation and public
2 entity classes but they were possible in the fire victim
3 classes, which is true, but there's been no evidence as to how
4 many personal injury claims have in fact been made. The fact
5 that they can be made is one thing, but the fact as to whether
6 they have been made is what matters. And we have no evidence
7 from Mr. Wells, or anybody else, as to how many have been made.
8 I'm sure some have, but --

9 THE COURT: I'm not following. Therefore, what? We
10 know how many claims have been filed by fire victims.

11 MR. TOSDAL: Right.

12 THE COURT: And although you and I haven't looked at
13 all 80,000 of them, one could determine which of them include
14 claims for personal injury or wrongful death. So it's
15 ascertainable, at least the claim, maybe not the amounts, but
16 the existence of the claims is a knowable fact.

17 MR. TOSDAL: That's right, but it's not known in this
18 proceeding. That's my point.

19 THE COURT: But why does it need to be known? Why
20 does it need to be known --

21 MR. TOSDAL: Because --

22 THE COURT: -- under the current plan?

23 MR. TOSDAL: Because you have to determine whether the
24 claims are substantially similar, and if a claim isn't made, it
25 doesn't go into the matrix.

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1 THE COURT: Mr. Tosdal, if it isn't made, it's not
2 going to participate. So if there's a victim out there who
3 particularly had notice, suffered a personal injury and didn't
4 file a claim, that person's out -- out.

5 MR. TOSDAL: Right, but --

6 THE COURT: But so therefore there's no need to know
7 what that person's claim is.

8 MR. TOSDAL: I'm not asking what that person's claim
9 is.

10 THE COURT: Okay.

11 MR. TOSDAL: What I'm talking about is the substantial
12 similarity of claims.

13 THE COURT: Okay.

14 MR. TOSDAL: Okay? And so the standard is not
15 identify of claims. It's substantial similarity. And so I
16 take my guidance from a case that I'm sure you've committed to
17 memory, not out of love but having read it 5,000 times, which
18 is the Dow Corning case. And the bankruptcy court in that
19 case, at page 658, said, "All breast implant claims are
20 substantially similar. All are unsecured, unliquidated, and
21 disputed tort claims arising out of the manufacture and sale of
22 breast implants." So what they had in Dow Corning, as you and
23 counsel know well, were three experts who went through the
24 claims in exquisite detail differentiating between domestic and
25 international -- excuse me -- international claimants.

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1 We just don't have that here. We have Mr. Wells, who
2 is not an attorney, did his best, I'm sure, to distinguish
3 between the claims but really was unable to distinguish between
4 the claims among the three classes. So I submit that based
5 upon the evidence that you have before you, the claims of the
6 three groups are substantially similar.

7 And if Your Honor has any question about the liability
8 claims, I would offer Garrison Exhibits 5 through 7, which are
9 the sort of the predicate to the bankruptcy claims, which are
10 the master complaints in the North Bay fire litigation for the
11 three groups, which are virtually identical in their claims of
12 liability against PG&E.

13 So then we get to the second prong, and that is that
14 the debtor and the plan proponents have not established a
15 legitimate business or economic reason for different treatment
16 of the classes. The counsel offered this morning that the
17 subrogation crew -- excuse me -- subrogation plaintiffs were
18 not members of the TCC. Well, they didn't want to be. They
19 had their own group. I don't think that matters. Counsel
20 submitted this morning that major municipalities -- that the
21 public entity group contained major municipalities harmed by
22 the fires and to the exclusion of other claimants who were paid
23 to -- who made claims for putting out the fires. There's no
24 evidence of that either. You've got sixty-two cities, I'm
25 told, in the Fire Victim's class, and nineteen separate

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1 groups --

2 THE COURT: Well, you say -- excuse me. You're saying
3 there's no evidence, but I've approved settlements that
4 essentially resolves them. I've approved a comprehensive
5 settlement with FEMA and the California comparable agency and a
6 separate one with a number of the Butte entities. So what is
7 to say there's no evidence? The debtor has agreed to certain
8 amounts of liabilities. Why do I need more evidence than the
9 creditor accepting the concession by the debtor? That's better
10 than evidence.

11 MR. TOSDAL: Because they're -- sorry. Because there
12 will be more in the fire victim class, and again, the --

13 THE COURT: If you -- well, I'm sorry. Go ahead.
14 What public entities are in the fire victims class?

15 MR. TOSDAL: Well, I'm told that there's sixty-two --
16 and I've seen the list -- sixty-two claiming cities.

17 THE COURT: Okay.

18 MR. TOSDAL: And more claiming counties. And Mr.
19 Wells admitted that there are many more public entities in the
20 fire victim class than there are in the public entity wildfire
21 claim class. That's an admission --

22 THE COURT: You may be correct. I might have jumped
23 the gun in saying that. Okay. I understand that, so.

24 MR. TOSDAL: That's an admission he made on pages 6
25 through 8 of his testimony.

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1 Okay. So anyway, I think that what this really boils
2 down to is the fact that these classes are created because
3 they're separate settlements, separate settlements with the
4 public entity wildfire claim group, separate settlements with
5 subro, and then with the TCC where everybody else was lumped
6 into the fire victim class.

7 But I submit to Your Honor that just the fact of a
8 separate settlement is not good enough to create a class. And
9 the reason for that flows from case law, but it's also in the
10 doctrine of equal treatment. If a group -- if a debtor and a
11 group can get around the doctrine of equal treatment by the
12 mere fact of the settlement, then there's going to be (break in
13 audio) by virtue of people just getting around what the law
14 requires in terms of equal treatment.

15 So I looked at the one mass tort case that seemed to
16 deal with this, Dow Corning. Dow Corning doesn't say that a
17 settlement alone is good enough to create a separate class.
18 The cases cited by debtor and the subrogation group either
19 don't have an issue with regard to a separate subrogation class
20 such as the Montreal and Mesa Air cases. And the other cases
21 all have some very additional substantial reason why there's a
22 separate class permissible. For example, the Chateauguay case,
23 there was union trouble for one class, no union trouble for
24 another. The Lube case, there was a third-party guarantee for
25 one class, not for the other. And the Stockton case, there was

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1 a different securing collateral.

2 So what I'm saying here, Your Honor, is that there
3 is -- the only credible -- I mean, credible business and
4 economic justification for the separate classification that I
5 see here in the evidence is separate settlements, and that,
6 under the law, does not provide a legitimate reason for
7 separate classifications.

8 THE COURT: So your time is almost up. What would you
9 have me do? Deny confirmation?

10 MR. TOSDAL: On that. But Your Honor, I --

11 THE COURT: I mean, I --

12 MR. TOSDAL: -- do have --

13 THE COURT: -- I can't redo the plan. I can tweak it.
14 I can say, I got to change paragraph this or that, but you want
15 me to fundamental -- dismember this plan and --

16 MR. TOSDAL: Yes.

17 THE COURT: -- then what happens?

18 MR. TOSDAL: Well, I mean, then it goes to, I think --
19 you wouldn't have to revote the fire victim class because they
20 do better, but you would have to revote the 115 --

21 THE COURT: When would Ms. Garrison likely see some
22 money?

23 MR. TOSDAL: I'm not sure she's going to see money
24 under this plan, frankly, Your Honor.

25 THE COURT: Well --

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1 MR. TOSDAL: Because we're going to get to the second
2 objection, and I have my fifteen minutes, but a lot of time has
3 been consumed in colloquy with Your Honor.

4 THE COURT: I know. And that's one of the rules. But
5 I'm going to give you a little leeway, but you tell me why is
6 that a good thing for her for me to deny confirmation?

7 MR. TOSDAL: Because Ms. Garrison and her fellow Camp
8 Fire community members have suffered a lot, and Ms. Garrison
9 feels that she is getting the short end of the deal. And this
10 goes to the second objection that had been posed by Ms.
11 Garrison for which there is a fix without denial. And that
12 second objection is the fundamental unfairness of this plan in
13 two respects.

14 Number one is that investors in Pacific Gas & Electric
15 Company purchased subrogation claims against their own company
16 and stand to make hundreds of millions if not billions of
17 dollars in profit off of this bankruptcy, while the fire
18 victims have to take the risk of stock. Now, you say -- or you
19 told me in my examination of Mr. Wells that, okay, well, that's
20 traditional. Well, this is not a traditional case. This is a
21 case involving human beings who have lost, many of them,
22 everything and (break in audio). The idea of Wall Street
23 profiting off of this and pushing the risk onto fire victims is
24 fundamentally unfair.

25 And then the second aspect of her objection is that

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1 fire victims and Ms. Garrison don't even know what the deal is.
2 There was something that happened with Mr. Ziman's cross-
3 examination that snapped my head back, and I'm sure Your Honor
4 noticed it as well. There is no registration of rights
5 agreement in place, and Mr. Ziman, on page 15 of the transcript
6 of his testimony, responded to Your Honor's question about how
7 long will it take the trust to sell stock. And Mr. Ziman's
8 answer was, "Well, it's up to the trustee subject to the terms
9 of any agreement that would restrict the trustee's time to do
10 that." Well, that's brand new to me, and it's brand new to Ms.
11 Garrison. Is there in the works a deal whereby the fire
12 victims are going to have to hold on to their stock for a
13 period of time before they can sell it?

14 And so it is fundamentally unfair for there to be
15 profit-taking by Wall Street on the backs of fire victims, and
16 it is fundamentally unfair for the fire victims to not even
17 know what the deal is. And the fix for the latter, without a
18 revote, without risking 1054 and all the other stuff, is that
19 there be an amendment to the plan with a registration of rights
20 agreement that the fire victims consent to, that at least the
21 fire victims will know when they can get their money.

22 Thank you, Your Honor.

23 THE COURT: Okay. Thank you, Mr. Tosdal. I
24 appreciate your argument, and I'll leave it at that for now.

25 Next on my list is Mr. Finestone.

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1 THE CLERK: Your Honor, I received a message from Mr.
2 Finestone, and he indicated he is not available.

3 THE COURT: Okay. Would you bring Mr. --

4 MR. TOSDAL: May --

5 THE COURT: -- Bray into the -- oh, I'm sorry. Did
6 Mr. Tosdal want to say something more?

7 THE CLERK: No. I don't believe so.

8 THE COURT: Bring Mr. Bray in for a minute. I want to
9 see what his pleasure is.

10 THE CLERK: Mr. Bray is joining now.

11 THE COURT: Mr. Bray, I can see your name, but you
12 need to unmute and activate your video.

13 There you go. Good afternoon.

14 MR. BRAY: Sorry about that, Your Honor. Good
15 afternoon. Gregory Bray, Milbank LLP.

16 THE COURT: Now, we've got you down for fifty minutes,
17 and I'm not trying to shortchange you, and I'm prepared to move
18 you to tomorrow if that's better for you. If you're ready to
19 go today, I'll let you do it, but if you do, I'm going to give
20 you the full time, but I probably will make you the final
21 arguer today. So what's your pleasure?

22 MR. BRAY: A clarification, Your Honor. First, if I'm
23 going to argue substantively, I prefer to do it tomorrow, but I
24 have a clarification or question for you. You clearly stated
25 that the indemnification contribution issues that arise out of

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1 executory contracts you want to defer to Friday. We've also
2 raised the same issue in respect of general unsecured
3 claimants. In the sur-reply you allowed us to file, we fleshed
4 that issue out, and I'm just trying to understand if you
5 consider those issues -- you want to hear them argued together,
6 which I think makes sense because the arguments are very
7 similar. They're not identical, but they involve 502 and there
8 are some similarity there, so if we argue them separately,
9 there will be overlap on the argument, and I'm prepared to do
10 that tomorrow if you like, or I'm also prepared to just simply
11 argue it all in a bundle together on Friday, whatever is your
12 pleasure.

13 THE COURT: Well, first of all, if you heard me say it
14 earlier today, when I went through the original objections last
15 weekend, there were so many that were cure-related that in my
16 mind, it makes sense to defer them, not only because it's a
17 discrete question, but secondly, Mr. Karotkin conceded that
18 they could be dealt with post-confirmation or later, not
19 under -- not an AB-1054 clock-ticking.

20 But then he made a good point that he wanted to deal
21 with contribution indemnity, and I said no. That's part of the
22 bundle that relates to executory contracts, and I just couldn't
23 prepare for it. But I did allow you to file your sur-reply, I
24 did read your argument, and I assumed that you wanted to deal
25 with the 502(e) issue. And in one of my two docket texts that

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1 I disrupted Mr. Karotkin's evening relaxation, I said that I
2 wanted him to talk about the 502 issue and what's the outcome
3 of it.

4 And so the question is which makes sense? Does 502 --
5 is that a discrete package or should it be discussed in the
6 context of assumption of contracts because it's not limited to
7 assumption of contract, right?

8 MR. BRAY: Agreed.

9 THE COURT: Yeah. So what would be most efficient,
10 from your point of view?

11 MR. BRAY: My sense is it probably makes most sense to
12 argue the issues together at once, only because otherwise, I'm
13 afraid there will be some level of redundancy. And again, I'm
14 trying to be respectful of the Court's time and your desire not
15 to hear the same thing twice. We could certainly separate them
16 and go that route. I just think that there might be some
17 overlap. I'm willing to go whichever way the Court prefers.

18 THE COURT: It isn't just my time. It's just
19 comprehending all these issues.

20 MR. BRAY: Yeah.

21 THE COURT: Mr. Karotkin, it sounds to me like the
22 better approach here is to let Mr. Bray package up all of his
23 arguments, including 502, whether they belong with the
24 executory contracts or some other concept; it's one legal
25 analysis. Don't you agree?

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1 MR. KAROTKIN: If you're saying we should do them
2 together, like Mr. Bray suggested, I would agree with that.

3 THE COURT: So here's what I propose. We have a few
4 other people and maybe -- well, wait a minute. Mr. Winsberg
5 wanted to follow you, Mr. Bray, but that was going to be
6 tomorrow. I mean, I'm dealing in tomorrow. That's what this
7 stay-at-home does to all of us. I don't know what day it is.

8 MR. BRAY: I understand.

9 THE COURT: So it's tomorrow already. But I think
10 what I'd like to do, perhaps, is then pass for you and maybe
11 let Mr. Abrams have his time now. And then I'll add you to the
12 list of people that I want Mr. Karotkin to suggest a sequencing
13 for the bulk of tomorrow and whatever we need to do on Friday.

14 MR. BRAY: That's fine, Your Honor. And the only
15 other thing I would say then is that Mr. Karotkin stated
16 correctly that we have, I believe, resolved a number of other
17 open issues. We have seen some of the proposed changes in a
18 draft, not all of them. And I don't know when we'll see the
19 rest. I mean, obviously, they've got a lot to do. So at some
20 point, we may need to be heard about disagreements over --
21 hopefully, we won't -- over what we agreed to or the actual
22 words. I'm hopeful that won't happen, but that would be the
23 only other thing I think we would need to speak to.

24 THE COURT: Okay. Then we'll leave it at this way.

25 Mr. Karotkin, put Mr. Bray on your homework assignment

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1 to work out and make me a suggested agenda for whoever we don't
2 finish today, including the people that we've talked about
3 getting in there. So I don't know if Mr. Winsberg is even
4 listening today, but we're marking him for tomorrow at some
5 point and Mr. Troy at some point.

6 And so Mr. Bray, I'm going to excuse you for now and
7 call on Mr. Abrams and let him make his argument because he's
8 got a thirty-minute allocation.

9 And my personal plan is to conclude today by about 4
10 o'clock. Again, if this were a real court, I'd be going much
11 longer, but as I said, to me -- earlier -- and I don't know
12 what you counsel think, but I find this to be more demanding
13 and more difficult just from an overall labor effort than the
14 regular court. In the court, I can get up and look at other
15 people and make faces.

16 So Ms. Parada, would you bring Mr. Abrams in?

17 THE CLERK: Yes, Your Honor. Mr. Tsekerides has
18 raised his hand. Would you like me to bring him now or after
19 Mr. Abrams?

20 THE COURT: Yes. Yes. No. Bring him in, please.

21 THE CLERK: Okay. One moment.

22 THE COURT: Mr. Tsekerides, you raised your hand?

23 MR. TSEKERIDES: Yes, well, I'm sorry Mr. Bray left,
24 but I did want to address that briefly. I do think it makes a
25 lot of sense to have the 502(e) and the indemnity issues

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1 together, so if the UCC argues tomorrow, then I can address
2 those on Friday during that thirty-minute time frame that Your
3 Honor spoke about earlier today. I think that makes a lot of
4 sense.

5 THE COURT: Well, this is all very fluid. You and
6 your partner there and the other panel should put your heads
7 together and come up with what works best that gives your
8 opponents their opportunity to be heard but works efficiently
9 so that I can do my job. As I say, lawyers are always polite
10 to say it's too much of a burden on you, Judge. It's your
11 time. The time is not the issue. It's just absorbing all the
12 arguments and keeping track of them. So we'll defer to that.

13 Okay. Thank you, then.

14 MR. TSEKERIDES: Judge, thank you.

15 THE COURT: So we're going to go -- we'll go with Mr.
16 Abrams. And for planning purposes, on my list, I have Ms.
17 Wallace, Ms. Cabraser, Mr. Pitre, and Mr. Campora, Mr. Kelly,
18 Mr. Skikos. I don't know how many of those we're going to get
19 to, but I'm going to try to stick with the maximum times.

20 And Mr. Abrams, who I see on the screen, unmute
21 yourself, Mr. Abrams. I'm going to give you thirty minutes,
22 and you're up to bat. Good afternoon.

23 MR. ABRAMS: Good afternoon, Your Honor. I am
24 unprepared to talk to this today. I was on the schedule for
25 very late tomorrow, and I was relying on understanding the

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1 TCC's position. I reached out to them for a meet-and-confer,
2 didn't have that happen, and so really just not prepared to go
3 through all my arguments at this moment. I apologize, Your
4 Honor, but because of the schedule, that's how I situated
5 myself.

6 THE COURT: I can't criticize somebody who was given a
7 timetable and then has it moved up, so I'll excuse you, and
8 we'll come up with -- but again, I don't know where you'll be
9 in the queue tomorrow to be ready. So be ready to present your
10 case at some point tomorrow. I can't make it perfect. I got
11 to do my best.

12 MR. ABRAMS: Absolutely. And I will work with that.
13 Thank you, Your Honor.

14 THE COURT: All right. Ms. Parada, please bring in
15 Ms. Wallace.

16 Ms. Wallace, I see your name, but you need to unmute
17 yourself and activate your camera.

18 All right. Can you hear me, Ms. Wallace? Well, there
19 you go.

20 MS. WALLACE: I think I can, Your Honor.

21 THE COURT: All right. Tip your screen a little bit.
22 I can only see the top of your head. There you go. Good
23 afternoon.

24 MS. WALLACE: Hi there, Judge. How are you?

25 THE COURT: I'm fine. Thank you. You have five

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1 minutes to make your presentation.

2 MS. WALLACE: And I'm not ready. I'm not scheduled
3 till tomorrow after Will (phonetic), three or four names down,
4 so.

5 THE COURT: I can't promise you that I'm going to be
6 able to do it. I understand your point. I won't --

7 MS. WALLACE: Yeah. I mean, I was scheduled for
8 tomorrow.

9 THE COURT: I know you were. I'm not going to treat
10 you any differently from anyone else. I'm not going to say you
11 can't. I'm just saying, I can't promise you how much time
12 there will be. It would be dishonest for me to hold you to a
13 time and then tell you you got to do it a day earlier. So you
14 told me that you weren't ready. I'll take your word for it.
15 I'm just saying I don't know how much flexibility we'll have
16 tomorrow, so be ready tomorrow when you get told what the
17 schedule is. Okay?

18 MS. WALLACE: Thank you.

19 THE COURT: All right. Thank you.

20 All right. Let's do this so as to save time. I'm
21 going to ask for counsel to raise your hand on the Zoom screen
22 if you want to be heard today. Ms. Cabraser, Mr. Pitre, Mr.
23 Campora, Mr. Kelly, Mr. Skikos. And I would say that I suspect
24 that all of you are supporting confirmation, so I don't think
25 you need a lot of time to prepare, and I will be less persuaded

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1 that you have to have a whole day tomorrow to prepare, but
2 raise your hand if you want to and you're ready to make your
3 argument today.

4 THE CLERK: Excuse me, Your Honor. I received a
5 communication regarding Ms. Cabraser, Pitre, Campora, Kelly,
6 Skikos. They're not prepared to go forward today and request
7 some time tomorrow.

8 THE COURT: Well, they may not get any time tomorrow,
9 but we'll see what we do. Okay. All right. Well --

10 THE CLERK: Mr. Khaldoun Baghdadi has raised a hand.
11 Would you like me to bring him in?

12 THE COURT: All right. Bring him in, please.

13 Good afternoon, Mr. Baghdadi. You need to unmute
14 yourself.

15 MR. BAGHDADI: Good afternoon, Your Honor. Thank you
16 for allowing me to come in. I just wanted to speak on behalf
17 of those last group of panelists.

18 THE COURT: Well, if you speak on their behalf, they
19 might get cut out tomorrow, so --

20 MR. BAGHDADI: Well, that's why I'm going to be brief,
21 Your Honor. The reason why I was asked to email the Court on
22 their behalf, Mr. Kelly is my partner, and they're also all
23 representatives of members of the TCC. We are still in
24 negotiations with the debtor and with the plan proponents. We
25 are hopeful that we'll be able to resolve those issues, and so

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1 I can't envision we'll take five slots as necessary, so -- due
2 to the unavailability, but I'm hopeful we'll be able to
3 condense it down, and we'll work with Mr. Karotkin on the
4 schedule. And I just wanted to let the Court know and to thank
5 you for your time.

6 THE COURT: That's good news. Keep up the good work.
7 Good luck. Tell your colleagues to bring home the bacon.
8 Thank you.

9 MR. BAGHDADI: Thank you, sir.

10 THE COURT: Mr. Karotkin?

11 MR. KAROTKIN: Yes, sir.

12 THE COURT: I think we're out of work for today.
13 Since I can't sell the rest of Wednesday to the Thursday
14 customers, I don't know how I can get any of the Friday
15 customers. So I guess we should adjourn unless there's
16 something else you want me to take up.

17 MR. KAROTKIN: No. I would just ask, in connection
18 with your request that people contact us about scheduling, that
19 when they do so, they identify the issues that they want to
20 speak on and the amount of time they believe they need so we
21 can try to coordinate that as you requested. And I would ask
22 if they could please, when they send an email, send it to
23 myself, Mr. Tsekerides, and Ms. Liou, and I think everybody
24 should have those email addresses.

25 THE COURT: Okay. I'll just state it -- let's see.

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1 One second here. We have 230 -- 287 people on this call. So I
2 get -- we probably got most of the people that want to be
3 heard, and again, I can't fault any of them for not wanting to
4 be heard today when they expected to be heard tomorrow. But
5 we're going to -- we're juggling the schedule, and I'm going to
6 stick with the times for people that are identified on there
7 then. For example, the last group that I mentioned and
8 certainly Mr. Abrams. For him and Ms. Wallace, they're really
9 is a question of preparing.

10 For the various counsel who were scheduled today, it's
11 a good thing that they want more time because, Mr. Karotkin,
12 you and your clients have made it more enticing for them to get
13 around to your way of thinking or you around to their way of
14 thinking.

15 So everyone on the call, I'm sticking with the stated
16 times in my order of yesterday, but for those parties who wish
17 to be added to the list because of the contribution and
18 indemnity issues that are keyed to assumption of contracts, and
19 to the extent that there's some overlap in (break in audio)
20 issues, my expectation is to have all of you notify Mr.
21 Karotkin, Mr. Tsekerides, and Ms. Liou that you wish to be
22 heard and how much time your estimate is.

23 Again, I'll repeat. I don't want the lawyers who have
24 already had their time allocations to just tell them the same
25 thing. I don't want them to bury them in email. And at the

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1 conclusion of the hearing on the examiner motion tomorrow,
2 which that starts at 9:30 -- I haven't given time allocations
3 to anybody, but I'm not going to spend a huge amount of time.
4 My guess is I won't take more than twenty or thirty minutes per
5 side, but I haven't had the time to do any tentative ruling or
6 anything. I haven't even had time to read all the filings, but
7 that's how I'll be spending the evening.

8 And I will hear from Mr. Karotkin with a suggested
9 timetable to complete what we need to do either today or
10 tomorrow, and with that --

11 MR. KAROTKIN: One more thing, Your Honor?

12 THE COURT: Yes, sir.

13 MR. KAROTKIN: If I could interrupt. And in
14 connection with those requests, if we could ask -- and I think
15 you suggested this -- Mr. Gorton, Mr. Glassman, Mr. Tredinnick
16 to coordinate because I think that their pleadings are largely
17 the same as --

18 THE COURT: I think they already indicated a
19 willingness to do that. I think the earlier communication that
20 came -- I believe it came from Mr. Gorton, but again, I -- my
21 staff is keeping me informed through my phone here, but I think
22 they're working pretty much in hand anyway. So I think you
23 can -- you've got some efficiencies there already.

24 MR. KAROTKIN: Okay. And one last thing. I think
25 that in view of the scheduling and how we have managed to

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1 accelerate things a bit, my suggestion is that with respect to
2 Mr. Etkin and his colleagues, that that be moved to the last
3 item on Thursday, and then on Friday, we would have Mr. Julian
4 in closing and Mr. Molton.

5 THE COURT: Well, let's do this. I don't want to take
6 time now to hear from them. They've heard your request. If
7 you can -- if you are able to put it all into a proposed agenda
8 that restates it, you can put it out there, and they have until
9 10 o'clock or 10:30 tomorrow morning to weigh in on it, and
10 I'll devote a few minutes right at the outset -- or excuse
11 me -- right at the conclusion of the examiner motion to listen
12 to everybody about scheduling.

13 So I'll certainly -- remember, I gave Mr. Etkin, et
14 al., a long period of time, and clearly, that's still a very,
15 very unresolved and significant issue. So I'll try to
16 accommodate that schedule, but you need to let them -- part of
17 the process.

18 And it seems to me it'll work too, if we can --

19 MR. KAROTKIN: Okay. Thank you.

20 THE COURT: Okay. Thank you, everyone. Have a nice
21 evening, and I'll look forward to talking to you tomorrow.

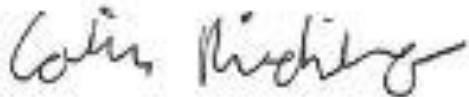
22 I'm going to conclude the hearing. Thank you to Ms.
23 Parada and Ms. Thomas for -- my staff today.

24 Good evening.

25 (Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ COLIN RICHILANO

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Date: June 4, 2020

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